No. 14601

United States
Court of Appeals
for the Ninth Circuit

JAMES B. DOYLE,

Appellant,

vs.

OLIVER A. FOX, J. E. PATTERSON and COREY GABRIELSON,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—3-4-55

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[Clerk's Note: When deemed likely to be of an important nature errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court for the Northern District of California, Southern Division

No. 31723

JAMES B. DOYLE,

Plaintiff,

vs.

OLIVER A. FOX, J. E. PATTERSON and COREY GABRIELSON,

Defendants.

COMPLAINT—TREBLE DAMAGES FOR RENT OVERCHARGES

Plaintiff complains and alleges:

I.

At all times herein mentioned there was in full force and effect the Housing and Rent Act of 1947, as amended (50 U.S.C.A. App. Sec. 1881 et seq.) and the Housing Rent Regulations (Rent Regulation 1) (16 Federal Register 12879 et seq.) establishing maximum lawful rents for housing accommodations.

II.

This action arises under Section 205 (a) and Section 205 (c) of the said Housing and Rent Act of 1947 as amended (50 U.S.C.A., App. Sec. 1895 (a) and Section 1895 (c)), as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

III.

At all times herein mentioned defendants were the owners of certain housing accommodations in the Township of Pleasanton, County of Alameda, State of California, within the defense rental area of Southern Alameda County. Said housing accommodations were and are located on Santa Rita Road between the Town of Pleasanton, California, and the intersection of Santa Rita Road with Highway 50 in Alameda County, California, approximately one mile from Pleasanton, California, and approximately one and one-half miles from the said intersection of Santa Rita Road with Highway 50. Said housing accommodations are and were commonly known and designated as the El Rancho Santa Rita Motel.

IV.

At all times subsequent to January 14, 1952, the plaintiff has been and now is a tenant in possession of the above-mentioned housing accommodations.

V.

At all times herein mentioned the maximum lawful rent for said housing accommodations, pursuant to said Act and Regulations, was and is the sum of $152.00 per month.

VI.

During the period commencing on or about April 5, 1952, and continuously since that date, the defendants, in violation of said Act and said Regulations, have demanded, accepted and received from

said plaintiff as rent for said housing accommodations sums in excess of the maximum lawful rent for said housing accommodations. On or about April 5, 1952, the defendants demanded, accepted and received from the plaintiff as rent for said housing accommodations for the month of March, 1952, the sum of $2,000.00. On or about May 5, 1952, the defendants demanded, accepted and received from the plaintiff as rent for said housing accommodations for the month of April, 1952, the sum of $2,000.00. On or about June 5, 1952, the defendants demanded, accepted and received from the plaintiff as rent for said housing accommodations for the month of May, 1952, the sum of $2,000.00. On or about July 5, 1952, the defendants demanded, accepted and received from the plaintiff as and for rent for said housing accommodations for the month of June, 1952, the sum of $2,433.00.

VII.

The amount by which the rent so demanded, accepted and received by the defendants from the plaintiff exceeded the maximum lawful rent for said housing accommodations was and is the sum of $7,825.00. Three times the amount by which the rent thus demanded, accepted and received exceeded the maximum lawful rent for said housing accommodations is the sum of $23,475.00.

Wherefore, plantiff demands judgment against the defendants and each of them for the sum of $23,475.00 as liquidated damages, for reasonable

attorneys' fees in prosecuting this action, for costs of suit herein, and for such other and further relief as may be just and proper.

MALONE & SULLIVAN,

/s/ WILLIAM M. MALONE,

/s/ RAYMOND L. SULLIVAN,
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed August 5, 1952.

[Title of District Court and Cause.]

STIPULATION AND ORDER PERMITTING THE FILING OF SUPPLEMENTAL COMPLAINT

Subject to the approval of the above-entitled Court, the parties hereto, by and through their respective counsel, hereby stipulate that the plaintiff above named may file herein his supplemental complaint in the form attached hereto.

Dated: April 2, 1953.

WILLIAM M. MALONE,

By /s/ RAYMOND L. SULLIVAN,
Attorneys for Plaintiff.

/s/ JAMES P. SHOVLIN, JR.,

ARGUELLO & GIOMETTI,
Attorneys for Defendants.

It is so ordered: May 11, 1953.

/s/ EDWARD P. MURPHY,
Judge of the United States
District Court.

[Endorsed]: Filed May 11, 1953.

[Title of District Court and Cause.]

SUPPLEMENTAL COMPLAINT

By leave of court first had and obtained, the plaintiff files this supplemental complaint herein against the defendants Oliver A. Fox, J. E. Patterson and Corey Gabrielson.

I.

On or about August 5, 1952, the defendants demanded, accepted and received from the plaintiff as rent for the housing accommodations described in the complaint on file herein the sum of $152.00 and thereafter on or about August 11, 1952, the defendants demanded, accepted and received from the plaintiff as rent for said housing accommodations the further sum of $1,848.00; both of said sums, in the aggregate amount of $2,000.00, were demanded, accepted and received by the said defendants from the said plaintiff as rent for said housing accommodations for the month of July, 1952. Thereafter on or about September 12, 1952, the defendants demanded, accepted and received from the plaintiff

as rent for said housing accommodations for the month of August, 1952, the sum of $2,145.00.

II.

The amount by which the rent so demanded, accepted and received exceeded the maximum lawful rent for said housing accommodations for the said months of July and August, 1952, was and is the sum of $3,841.00. Three times the amount by which the rent thus demanded, accepted and received exceeded the maximum lawful rent for said housing accommodations for said period is the sum of $11,523.00.

Wherefore, plaintiff demands judgment against the defendants and each of them for the sum of $11,523.00 as liquidated damages, in addition to the relief demanded and prayed for in the original complaint on file herein.

MALONE & SULLIVAN,
/s/ WILLIAM M. MALONE,
/s/ RAYMOND L. SULLIVAN,
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed May 11, 1953.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT AND SUPPLEMENTAL COMPLAINT

Now comes Oliver A. Fox, J. E. Patterson and Corey Gabrielson, Defendants, answering the Com-

plaint on file herein admit, deny and allege as follows:

I.

Answering paragraph I these answering Defendants admit the allegations therein contained, and further answering said paragraph I these answering Defendants allege that at all times herein mentioned, there was in full force and effect rent regulation 2, Rent Regulation 3 and Rent Regulation 4 of the Housing Rent Regulations.

II.

Answering paragraph II, these answering Defendants deny generally and specifically, each and every, all and singular, the allegations thereof.

III.

Answering paragraph III, these answering Defendants admit the allegations therein contained.

IV.

Answering paragraph IV, these answering Defendants admit the allegations therein contained and further answering said paragraph IV, these answering Defendants allege that the Plaintiff vacated the premises on the 31st day of October, 1952.

V.

Answering paragraph V, these answering Defendants deny generally and specifically, each and every, all and singular, the allegations thereof, and

further answering said paragraph V, these answering Defendants allege that said housing accommodations were not subject to rent control under the provisions of said Act or the housing rent regulations.

VI.

Answering paragraph VI, these answering Defendants deny generally and specifically, each and every, all and singular, the allegations therein contained and not specifically admitted to be true; except that these answering Defendants admit that they have received the sums therein alleged as rent.

VII.

Answering paragraph VII, these answering Defendants deny generally and specifically, each and every, all and singular, the allegations therein contained.

As and for a First, Separate and Affirmative Defense, the Defendants Allege as Follows:

I.

That the Defendants rented said premises, consisting of twenty-two (22) dwelling units and a swimming pool, to the Plaintiff by a master lease, a copy of which is attached hereto as Exhibit "A," and expressly referred to and made a part hereof.

II.

That the Plaintiff did undertake to operate and hold out the units of said motel and the facilities of said motel to the public for rent for which the Plaintiff received large sums of money.

III.

That the Defendants were informed and of the belief that the premises were not subject to rent control and at all times herein said Defendants acted in good faith.

IV.

That the master lease executed by and between the Plaintiff, and attached hereto as Exhibit "A," is not now, nor ever has been, subject to rent control.

Answering the Supplemental Complaint on file herein, the Defendants admit, deny and allege as follows:

I.

Answering paragraph I, these answering Defendants deny generally and specifically, each and every allegation therein contained and not specifically admitted to be true; except that these answering Defendants admit that they have received the sums therein alleged as rent.

II.

Answering paragraph II, these answering Defendants deny generally and specifically, each and every, all and singular, the allegations thereof.

As and for a First, Separate and Affirmative Defense to Plaintiff's Supplemental Complaint on File Herein the Defendants Allege as Follows:

I.

These answering Defendants incorporate paragraphs I, II, III and IV of their First, Separate

and Affirmative answer to Plaintiff's Complaint on file herein as fully as though set forth again.

Wherefore, Defendants pray that Plaintiff take nothing by his action and that Defendants be awarded their costs of suit and for such other and further relief as to the Court seems meet and just.

/s/ JAMES P. SHOVLIN,
Attorneys for Plaintiff.

Duly verified.

EXHIBIT A

Lease

This Lease, executed in quadruplicate at Oakland, California, this 31st day of December, 1951, by and between Oliver A. Fox, J. E. Patterson and C. Gabrielson, hereinafter collectively called "Lessor," and James B. Doyle, hereinafter called "Lessee";

Witnesseth:

Lessor hereby lets to Lessee, and Lessee hereby hires from Lessor, all of that certain real property in the County of Alameda, State of California, more particularly described in Exhibit "A," attached hereto and hereby made a part hereof, together with all fixtures, attachments and appurtenances thereto, and all of the furniture and other personal property located thereon, which said furniture and other personal property is described in the inventory marked Exhibit "B" attached hereto and hereby made a part hereof.

The Purpose for which said premises are leased

shall be only for the operation of the El Rancho Santa Rita Motel and other lawful commercial activities directly related thereto.

The Term of this lease shall be for a period of Three Years commencing on the first day of January, 1952, and ending at midnight of the 31st day of December, 1954.

The Rent to be paid by Lessee to Lessor hereunder shall be as follows, to wit:

(a) From the commencement hereof, to and including the 29th day of February, 1952, Lessee shall pay over to Lessor each month as rent under this lease, the whole amount of the gross receipts from said operation on the demised premises, less Five Hundred Dollars ($500.00) per month only, which last mentioned sum the Lessee shall retain as the agreed upon total operating expense each month, regardless of whether said sum is more, less or the same as the actual amount of operating expense per month.

(b) From March 1, 1952, to and including September 30, 1952, Lessee shall pay over to Lessor each month as rent under this lease either the whole amount of the gross receipts from said operation on the demised premises less Five Hundred Dollars ($500.00) per month only, exactly as provided for in paragraph (a) immediately preceding, or Two Thousand Dollars ($2,000.00), whichever is the higher amount.

(c) From October 1, 1952, to the end of the term hereof, Lessee shall pay over to Lessor each

month as rent under this lease the sum of Three Thousand Dollars ($3,000.00).

(d) In addition to the rental payments hereinabove provided for, Lessee is hereby required and agrees that from and after October 1, 1952, Lessee shall:

1. Pay all of the taxes and special assessments upon any and all of the demised premises, real and personal, as the same shall fall due, for and on account of the Lessor, and

2. Insure at Lessee's expense throughout the term hereof all of the demised premises, real and personal, for not less than $40,000.00, for loss by fire, with extended coverage, loss payable to Lessor hereunder; and to provide at Lessee's expense public liability and property damage insurance coverage for and upon the demised premises and the said operation thereof in the following amounts, to wit, public liability: $100,000.00 and $200,000.00; property damage: $5,000.00.

In addition to the rental and tax payments and insurance hereinabove provided for, Lessee shall pay to Lessor, concurrent with the execution hereof, the sum of One Thousand Dollars ($1,000.00) which said sum is payed not as rent, but solely as part consideration for the execution of this lease by Lessor, the receipt whereof is hereby acknowledged by Lessor.

It Is Further Mutually Agreed by and Between Lessor and Lessee as follows:

(1) Lessor agrees that before June 1, 1952, un-

less prevented by act of God, or by act of any lawfully constituted government body, or by strikes or other causes beyond Lessor's control, Lessor shall, at Lessor's cost, (a) landscape the grounds of said premises in such manner as Lessor shall deem proper; (b) build a swimming pool on said premises, which said pool shall not cost Lessor more than $5,000.00, including all charges and expenses in connection with same.

(2) Lessee shall have the option to terminate this lease at any time on or after the first day of October, 1952, by giving Lessor sixty (60) days written notice by registered mail in the manner hereinafter provided.

(3) Concurrent with the execution hereof, Lessee shall be given full possession of said premises, his possession being hereby acknowledged by Lessee.

(4) The Lessee shall not use, or permit said premises, or any part thereof, to be used, for any purpose or purposes other than the purpose or purposes for which the said premises are hereby leased; and no use shall be made or permitted to be made of the said premises, nor acts done, with Lessee's knowledge or consent or of which Lessee should reasonably have known or foreseen, which will increase the existing rate of insurance upon the building in which said premises may be located, or cause a cancellation of any insurance policy covering said building, or any part thereof, nor shall the Lessee sell, or permit to be kept, used, or sold, in or about

said premises, any article which may be prohibited by the standard form of fire insurance policies. The Lessee shall, at his sole cost and expense, comply with any and all requirements, pertaining to said premises, other than structural defects not caused by any wilful or negligent act or omission of Lessee, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering said building and appurtenances.

(5) The Lessee shall not commit, or suffer to be committed, any waste upon the said premises, or any public or private nuisance, or other act or thing which may be unlawful or which may be damaging to the premises or to the Motel business thereon located. The Lessee shall not make, or suffer to be made, any alterations of the premises, or any part thereof, without the written consent of the Lessor first had and obtained, and any additions to, or alterations of, the said premises shall became at once a part of the realty and belong to the Lessor.

(6) The Lessee shall not vacate or abandon the premises at any time during the term except when required to do so by governmental direction and authority; and if, except as aforesaid, the Lessee shall abandon, vacate or surrender said premises, or be dispossessed by process of law, or otherwise, any personal property belonging to the Lessee and left on the premises shall be deemed to be abandoned, at the option of the Lessor, except such property as may be mortgaged to the Lessor.

(7) The Lessee shall, at his sole cost and expense, keep and maintain the said premises and appurtenances and every part thereof, including glazing, sidewalks adjacent to the said premises, any store front and the interior of the premises, except that during the period from the commencement hereof to and including September 30, 1952, only, Lessor shall be responsible for the repair and maintenance of roof, walls and foundations, in good and sanitary order, condition and repair, hereby waiving all right to make repairs at the expense of the Lessor as provided in Section 1942 of the Civil Code of the State of California, and all rights provided for by Section 1941 of the said Civil Code. By entry hereunder the Lessee accepts the premises as being in good and sanitary order, condition and repair, and agrees on the last day of said term, or other sooner termination of this lease to surrender unto the Lessor all and singular the said premises with the said appurtenances in substantially the same condition as when received, reasonable use and wear thereof and damage by fire, act of God, or the public enemy with which the United States may be at war, or by the elements, or accident not in any way connected with the operation of any business on said premises and for which Lessee is entirely free from fault, excepted.

(8) Lessee shall keep the demised premises and the property in which the demised premises are situated, free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for the account of Lessee.

(9) The Lessee shall, at his sole cost and expense, comply with all of the requirements of all Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to any business transacted on said premises; and, from and after October 1, 1952, Lessee shall also at his sole cost and expense, comply with all of the requirements of all said authorities now in force, or which may hereafter be in force, pertaining to the premises themselves, and shall faithfully observe in the use of the premises all Municipal ordinances and State and Federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of the Lessee in any action or proceeding against the Lessee, whether the Lessor be a party thereto or not, that the Lessee has violated any such ordinance or statute in the use of the premises, shall be conclusive of the fact as between the Lessor and the Lessee.

(10) The Lessee, as a material part of the consideration to be rendered to the Lessor under this lease, hereby waives all claims against the Lessor for damages to goods, wares and merchandise, in, upon or about said premises and for injuries to persons in, upon, or about said premises, from any cause (except the wilful or negligent act or omission of Lessor, its agents, servants, or its independent contractors) arising at any time, and the Lessee will hold the Lessor exempt and harmless for and on account of any damage or injury to any

person, or to the goods, wares and merchandise of any person, arising from the use of the premises by the Lessee or arising from the failure of the Lessee to keep the premises in good condition and repair, as herein provided.

(11) The Lessee, as a material part of the consideration to be rendered to the Lessor under this lease, hereby agrees that if the said premises, or any part thereof, shall be taken and condemned for public purposes by the proper authorities, the Lessee shall have no claim against the Lessor and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation and all right of the Lessee to damages therefor, if any, are hereby assigned by the Lessee to the Lessor, except that if all of said premisees are so taken and condemned between October 1, 1952, and December 31, 1954, inclusive, then Lessee shall, provided he is still occupying said premises at the time of any such condemnation and provided he has not within 60 days prior thereto given any notice of cancellation or termination of this lease and provided he has not committed or suffered to be committed any act or breach whatsoever of this lease which has not been waived by Lessor and which might give to Lessor the right to terminate this lease under the terms hereof, have the right to the entire amount of any payment or award resulting from such taking and condemnation less a flat sum to be awarded and paid to Lessor as his entire claim,

right and share, said flat sum to be fixed as follows:

(a) If condemnation occurs bettween October 1, 1952, and June 30, 1953, inclusive, Lessor's share shall be $175,000.00;

(b) If condemnation occurs between July 1, 1953, and February 28, 1954, inclusive, Lessor's share shall be $155,000.00;

(c) If condemnation occurs between March 1, 1954, and December 31, 1954, inclusive, Lessor's share shall be $135,000.00.

(d) Regardless of when said condemnation occurs, said amounts set forth in subparagraphs (a), (b) and (c) immediately above shall be increased by the addition thereto of the whole amount of any and all costs and expenses of whatsoever kind or character incurred by Lessor in connection with condemnation proceedings.

(12) The Lessee, as a material part of the consideration to be rendered to the Lessor under this lease, hereby waives all claims against the Lessor, but not against any public body or authority, for damages sustained, if any, by reason of any street widening, street repaving, reconstruction or reducing width of sidewalks or construction of new curbs or gutters by any public authority affecting the herein demised premises.

(13) The Lessee shall not conduct, or permit to be conducted, any sale by auction on or about said premises; and Lessee shall not place or permit to be placed upon or about said premises any sign,

advertisement, notice, marquee or awning, except as hereinabove expressly provided or except as required by law or except as absolutely required as necessary business practice in connection with the proper management and operation of said motel, without the written consent of Lessor.

(14) The Lessee shall pay for all water, gas, heat, light, power, telephone service and all other service supplied in the said premises.

(15) The Lessee shall permit the Lessor and his agent, at their own risk, to enter into and upon said premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the said premises, or for the purpose of making repairs, alterations or additions to any portion of said premises including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, or for the purpose of posting notices of non-liability for alterations, additions, or repairs; and shall permit the Lessor, at any time within thirty days prior to the expiration of this lease by termination before the expiration of the term hereof or otherwise, to place upon said premises any usual or ordinary "to let" or "to lease" or "for sale" signs.

(16) In the event of a partial destruction of the said premises during the said term, from any cause, the Lessor shall forthwith repair the same, provided such repairs can be made within sixty (60) working days under the laws and regulations of Federal, State, or County or Municipal authorities, but such

partial destruction shall in no wise annul or void this lease, except that the Lessee shall be entitled to a proportionate deduction of rent while such repairs are being made, such proportionate deduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by the Lessee in the said premises. If such repairs cannot be made in sixty (60) working days, the Lessor may, at his option, make same within a reasonable time, this lease continuing in full force and effect and the rent to be proportionately rebated as aforesaid in this paragraph provided. In the event that the Lessor does not so elect to make such repairs which cannot be made in sixty (60) working days, or such repairs cannot be made under such laws and regulations, this lease may be terminated at the option of either party. In any event Lessor shall within ten (10) days after such partial destruction occurs, notify the Lessee in writing whether Lessor intends to make said repairs (within a reasonable time extending beyond the said sixty (60) working days), and the time Lessor estimates will be required to make such repairs, and in the event said repairs cannot be made within said sixty (60) working days, or Lessor's estimate is more than sixty (60) working days, then Lessee may elect to cancel this lease and Lessee must so elect and notify Lessor in writing within ten (10) days after receipt of said notice from the said Lessor. In the event that Lessor does make such repairs, then Lessor agrees that all such repairs will be made as soon as possible. In the event said premises are

destroyed to the extent of 33⅓% or more of the replacement cost thereof, the Lessor may elect to terminate this lease, provided that Lessor must exercise such election by delivering to Lessee written notice of Lessor's election so to do within twenty (20) days after such destruction occurs; except that in the event said premises are so destroyed (between October 1, 1952, and the end of the term hereof, inclusive) to the extent of 33⅓% as aforesaid, then Lessee shall have the option to purchase said premises at a price equal to the option price hereinbelow set forth in paragraph 26 setting forth Lessee's option to purchase at the expiration of the full term hereof, plus a sum equal to $2,400.00 for each month of the unexpired term hereof from the time of said destruction, less the amount of the insurance proceeds paid to Lessor for and on account of said destruction under the fire and extended coverage policies required hereunder. Lessee must exercise his option under the within paragraph by giving written notice to Lessor by registered mail of Lessee's election to exercise his said option within ten (10) days after the date of said destruction. Except as hereinabove provided, the manner of exercise of this option by Lessee, and the terms of any purchase by Lessee under the option granted in this paragraph (16) shall be the same (including down payment) as provided for in paragraph (26) hereof, except that Lessee shall not be obligated to make any down payment if and only if said insurance proceeds paid to Lessor are $5,000.00 or more. If Lessee fails to

exercise this option within the time allowed hereinabove, or if Lessee fails in any particular to comply with any or all of the terms and conditions in connection with this option as the same are hereinabove described, then this option shall cease and terminate and have no effect whatsoever. In respect to any partial destruction which the Lessor is obligated to repair or may elect to repair under the terms of this paragraph, the provisions of Section 1932, subdivision 2, and of Section 1933, subdivision 4, of the Civil Code of the State of California are waived by Lessee. Wherever in this paragraph the words "working days" appear, the same shall mean every day except Saturdays, Sundays and official public holidays.

(17) The Lessee shall not assign this lease or any interest therein, including options to purchase, and shall not lease or underlet the said premises, or any part thereof, or any right or privilege appurtenant thereto, except rentals to occupants in the regular course of the motel business and for the purpose of maintaining in operation upon said premises a first class trailer park and a restaurant, including bar, nor permit any concessionaires to operate upon said premises, without the written consent of the Lessor first had and obtained, and a consent to one assignment or subletting shall not be construed as a consent to any subsequent assignment or subletting. Unless such written consent thereto has been so had and obtained, any assignment or transfer, or attempted assignment or transfer, of this lease or of any interest therein, or

underletting, either by voluntary or involuntary act of the Lessee or by operation of law or otherwise, shall, at the option of the Lessor, terminate this lease; and any such purported assignment, transfer, or underletting, without such consent shall be null and void. This lease shall not nor shall any interest therein, be assignable, as to the interest of the Lessee, by operation of law, without the written consent of Lessor.

(18) Either (a) the appointment of a receiver (except a receiver mentioned in paragraph 22 hereof) to take possession of all or substantially all of the assets of Lessee, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act, and (d) any action taken by Lessee in any legal proceedings, whether initiated by Lessee or any other person, under any or all existing or future laws, State or Federal, for the assistance of debtors, shall constitute a breach of this lease.

(19) In the event of any breach of this lease by Lessee, in addition to other rights or remedies he may have, shall have the immediate right of re-entry and may remove all persons and property from the premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee. Should Lessor elect to re-enter, as herein provided, or should he take possession pursuant to legal pro-

ceedings or pursuant to any method provided for by law, he may either terminate this lease or he may from time to time, without terminating this lease, re-let said premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this lease, except that in case of any breach which may be committed by Lessee between the commencement hereof and September 30, 1952, inclusive, the term or terms of any such re-letting by Lessor shall not extend beyond September 30, 1952) and at such rental or rentals and upon such other terms and conditions as Lessor in his sole discretion may deem advisable with the right to make alterations and repairs to said premises; upon each such re-letting (a) Lessee shall be immediately liable to pay to Lessor, in addition to any indebtedness other than rent due hereunder, the cost and expenses of such re-letting and of such alterations and repairs, incurred by Lessor, and the amount, if any, by which the rent reserved in this lease for the period of such re-letting (up to but not beyond the term of this lease) exceeds the amount agreed to be paid as rent for the demised premises for such period on such re-letting; or (b) at the option of Lessor rents received by Lessor from such re-letting shall be applied: first, to the payment of any indebtedness, other than rent due hereunder from Lessee to Lessor; second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder and the residue, if any, shall be

held by Lessor and applied in payment of future rent as the same may become due and payable hereunder. If Lessee has been credited with any rent to be received by such re-letting under option (a), and such rent shall not be promptly paid to Lessor by the new tenant, or if such re-letting under option (b) during any month be less than that to be paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by Lessor shall be construed as an election on his part to terminate this lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this lease for such previous breach. Should Lessor at any time terminate this lease for any breach, in addition to any other remedy he may have, he may recover from Lessee all damages he may incur by reason of such breach, including the cost of recovering the premises, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

(20) The voluntary or other surrender of this

lease by Lessee, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Lessor, terminate all or any existing subleases or sub-tenancies, or may, at the option of Lessor, operate as an assignment to him of any or all of such subleases or subtenancies.

(21) In case suit shall be brought for an unlawful detainer of the said premises, for the recovery of any rent due under the provisions of this lease, or because of the breach of any other covenant herein contained, on the part of the Lessee to be kept or performed, the Lessee shall pay to the Lessor if Lessor prevails in such suit a reasonable attorney's fee which shall be fixed by the Court.

(22) If a receiver be appointed at the instance of the Lessor in any action arising under this lease, or otherwise, to take possession of said premises and/or to collect the rents and profits derived therefrom, the receiver may, if it be necessary or convenient in order to collect such rents and profits, conduct the business of the Lessee then being carried on in said premises, and may take possession of any personal property belonging to the Lessee and used in the conduct of such business, and may use the same in conducting such business on the premises, without compensation to the Lessee for such use.

(23) The waiver by the Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any

subsequent breach of the same or any other term, covenant or condition herein contained.

(24) All notices, including notices of any dispute arising under the terms hereof shall be given to the Lessee in writing, personally or by depositing the same in the United States Mail, postage prepaid, and addressed to the Lessee at the address set opposite the name of Lessee at the end hereof unless Lessee has, prior thereto, notified Lessor in writing and received acknowledgment in writing of said notice of a change of address, which shall then be deemed the address of Lessee. All notices so mailed shall be conclusively deemed delivered on the date of mailing. All notices, including notice of any dispute arising under the terms hereof shall be given to the Lessor in writing, personally or by depositing the same in the United States Mail, postage prepaid, and addressed to the Lessor at the address of Lessor set opposite the name of Lessor at the end hereof unless Lessor has, prior thereto, notified Lessee in writing and received acknowledgment in writing of said notice of change of address, which shall then be deemed the address of Lessor. All notices so mailed shall be conclusively deemed delivered on the date of mailing. Notices must be sent by registered mail only where same is expressly required in this lease.

(25) The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the par-

ties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

(26) At the end of the full term hereof, Lessee shall have the option to purchase said premises, including the furniture and other personal property included in the inventory attached hereto and marked "Exhibit B" for the sum of $120,000.00, less a sum equal to any amount which Lessee has paid to Lessor as rent hereunder for and during the first nine months Only of the term hereof in excess of $18,000.00. The option to purchase given to Lessee by this paragraph may be exercised by Lessee only between December 31, 1954, and January 5, 1955, inclusive, by his giving notice in writing to Lessor of his election to exercise same and concurrent therewith depositing into an escrow at the Oakland Title Insurance and Guaranty Company the sum of Five Thousand Dollars ($5,000.00) cash as and for a down payment to Lessor, together with Lessee's note and deed of trust (Oakland Title Insurance and Guaranty Company's standard form) for the balance of the said purchase price with interest at six per cent (6%) per annum, payable in monthly installments of $1,200.00 or more, including said interest from date of vesting, together with appropriate escrow instructions; whereupon Lessor shall be obligated to deposit in said escrow his grant deed to the premises to Lessee, together with appropriate escrow instructions, title to vest in Lessee free and clear of liens and encumbrances, subject only to current taxes prorated as of date of vesting, covenants, conditions and restrictions of record, if any, and subject to any

liens or encumbrances arising out of any work performed, materials furnished, or obligations of any kind incurred by or for the account of the Lessee. If Lessee fails to exercise this option between December 31, 1954, and January 5, 1955, or in any other way fails to comply with the terms and conditions hereof, then this option shall immediately cease and terminate and have no effect whatsoever.

(27) During the term hereof, Lessee shall keep such books and records as are usual and necessary for the proper operation of said Motel and in accordance with good business practice in similar businesses; and Lessee shall make said books and records available to Lessor for inspection and auditing by, or on behalf of Lessor at all reasonable times during business hours; and all rental payments hereunder shall be paid by Lessee to Lessor at 1456 First Avenue, Oakland 6, California (c/o Mr. J. E. Patterson) or such other place as Lessor may from time to time designate, on or before the fifth day of the month immediately following the month for which the same has accrued in accordance with the terms hereof.

(28) Lessee covenants and agrees that so long as this lease shall be in effect, he shall diligently and personally supervise and manage the operation of said premises and the Motel business located thereon, and that said business shall be in continuous, full operation during said time, except as prevented by causes or contingencies beyond Lessee's control.

(29) In the event Lessee gives notice to Lessor of his election to terminate this lease for any reason prior to the expiration of the term hereof, such notice shall also effect complete termination of and constitute Lessee's full and complete release and surrender of Lessee's option to purchase the demised premises as provided for in paragraphs (26) and (16) hereof; and if Lessee should at any time commit any breach of this lease, or if for any reason whatsoever this lease is terminated at any time, then any and all options given to Lessee under this lease shall immediately and simultaneously cease and terminate and have no effect whatsoever; and if Lessee should exercise any right given to him herein to terminate this lease by giving notice to Lessor, or if this lease should be terminated by Lessee's exercise of any option or right of any kind granted to Lessee by the terms of this lease or any other reason whatsoever, Lessee shall continue to pay rent during the entire period of his occupancy of said premises.

(30) Time is of the essence of this lease.

In Witness Whereof, the Lessor and the Lessee have executed these presents the day and year first above written.

/s/ OLIVER A. FOX,
8421 Ney Ave.,
Oakland, Calif.,

/s/ J. E. PATTERSON,
1456-1st Ave.,
Oakland 6,

/s/ C. GABRIELSON,
8415 Ney Ave.,
Oakland, Calif.,
Lessor.

/s/ JAMES B. DOYLE,
3150 San Pablo Ave.,
San Pablo, Calif.,
Lessee.

Exhibit "A"

Real Property in the Township of Pleasanton, County of Alameda, State of California, described as follows:

Portion of the 17.82 acre tract described in the deed from J. Smith Knapp and Anna Gross Knapp to Harold W. Grimm and Katherine I. Grimm, dated August 4, 1946, recorded September 26, 1946, in book 5998 of Official Records of Alameda County, page 68, described as follows:

Beginning at a point on the center line of the Pleasanton-Santa Rita Road, known as County Road No. 1533, distant thereon north 15° 20′ 30″ west 1300.07 feet from the center line of Valley Avenue, or County Road No. 7091; running thence along said center line of County Road No. 1533 south 15° 20′ 30″ east 660.31 feet; thence north 89° 51′ west 544.96 feet to the western line of said 17.82 acre tract; thence along the last named line north 0° 9′ east 615 feet to the southern line of the tract of land containing 14.48 acres, more or less, described in the deed by Spring Valley Company,

Ltd., to Amador Valley Mutual Water Company, dated June 23, 1940, recorded August 6, 1940, in book 3937 of said Official Records at page 331; thence along the last named line north 67° 02′ 10″ east 18.36 feet to a line drawn south 97° 51′ 10″ west from the point of beginning; thence north 87° 51′ 10″ east 351.99 feet to the point of beginning.

Containing, excluding the portion in the street, an area of 5.94 acres, more or less.

Exhibit B

El Rancho Motel at Pleasanton—December, 1951

11 General Electric Kitchens—Elect. Stoves and ovens, Refrigerators, stainless steel sinks & drain boards, 22 steel dish cabinets, 11 steel sink cabinets.
8 Solid ash lamp step tables with glass.
15 Solid ash desks vanity combination.
2 Solid ash headboards, #601A Gillcraft.
10 Solid ash headboards, #601 Gillcraft.
14 Solid ash upholstered vanity benches.
2 Solid ash 3/3 bed ft. bds. hd. bds. & rails.
9 Solid ash 4/6 bed ft. bds. hd. bds. & rails.
8 Solid ash commodes (night stands).
8 Solid ash 4 dr. chests.
8 Solid ash pairs mirror brackets.
8 Armless stowabds. and mattresses.
1 18″ street push broom, 54 in. handle.
1 12″ street push broom, 54 in. handle.
1 18″ push broom, 60 in. handle.
2 17″ dust mops with handles.

1 Fiber—20 gallon garbage can & top.
22 Upholstered chairs.
60 Extra stuffed pillows.
3 Rolla beds & mattresses (folding beds).
3 Rolla beds & mattresses with plastic headboard.
22 Floor lamps—3-way sockets & shades.
26 Table lamps and shades—fancy quality.
14 Metal bed frames with hinges.
2 Small kitchen tables.
6 Large kitchen tables.
28 Upholstered kitchen chairs.
(Plastic tops & upholstering)
14 Mirrors—30 x 40.
12 Kitchen brooms.
3 Kitchen mops.
3 Red kitchen tables.
10 Red kitchen tables.
(Plastic tops & upholstering)
Electric bulbs.
6 Single foam rubber mattresses.
6 Single box mattresses.
19 Doublefoam rubber mattresses.
19 Doublefoam rubber mattresses.
8 Mirrors—24 x 30.
2 Doz. kitchen towels—32 x 38.
24 Double spreads.
12 Twin size spreads.
30 Pr. drapes.
12 Spreads for stowaway beds.
10 Doz. Turkish towels, bath size 20 x 40.
(Short 31)
10 Doz. huck towels, size 16 x 32.
(Short 39)

10 Doz. wash clothes, size 12 x 12.
(Short 55)
1½ Doz. single mattress pads, size 39 x 76.
2½ Doz. double mattress pads, size 54 x 76.
45 Blankets, size 72 x 84.
(Short 1)
4 Doz. bath mats, size 20 x 30.
(Short 14)
48 Scatter rugs (reversable), size 22 x 32.
10 Doz. sheets—140 count, size 81 x 108.
(Short 24)
4 Doz. sheets—140 count, size 72 x 108.
14 Doz. pillow cases, size 42 x 36.
Main neon sign with flasher neon "Office" sign.

[Endorsed]: Filed May 14, 1953.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS UNDER RULE 36

Plaintiff James B. Doyle requests the defendants Oliver A. Fox, J. E. Patterson and Corey Gabrielson within ten days after service of this request to admit, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, that each of the following statements is true.

1. That on December 31, 1951, the plaintiff, as lessee, and the defendants, as lessors, entered into the written lease, copy of which is attached to and

made a part of the defendants' answer heretofore filed in this action.

2. That the premises which were the subject of said lease were not rented at any time prior to December 31, 1951.

3. That the first rent for said premises which were the subject of said lease was the sum of $152.00 per month.

4. That the first rent for said premises which were the subject of said lease was for the rental period February 1, 1952, to February 29, 1952.

5. That the defendants Oliver A. Fox, J. E. Patterson and Corey Cabrielson did not file in the Area Rent Office of the Defense-Rental Area of Southern Alameda County, or elsewhere in any Area or Regional Rent Office, a rent registration statement for the said premises which were the subject of said lease.

6. That at no time prior to October 1, 1952, did the Director of Rent Stabilization, or the Area Rent Director of the Defense-Rental Area of Southern Alameda County, or any other person or persons appointed or designated by the Director of Rent Stabilization to carry out any of the duties delegated to him pursuant to the Housing and Rent Act of 1947, as amended, make or issue an order increasing or otherwise adjusting the maximum rent allowable for the said premises which were the subject of said lease.

7. That at no time prior to October 1, 1952, did

the defendants or any of them make or file any petition or application with the Area Rent Office of the Defense-Rental Area of Southern Alameda County or any other Area or Regional Rent Office to increase or adjust the maximum rent allowable for the said premises which were the subject of said lease.

Dated: July 29, 1953.

WILLIAM M. MALONE,
RAYMOND L. SULLIVAN,
/s/ W. J. DOWLING, JR.,
Attorneys for the Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 30, 1953.

[Title of District Court and Cause.]

ANSWER TO REQUEST FOR ADMISSIONS

1. The allegations of paragraph number one are admitted.

2. The allegations of paragraph number two are admitted.

3. The allegations of paragraph number 3 are denied, and in this regard it is alleged that the rent was at all times fixed and determined by the lease entered into by the parties, which said lease provided for the rental to be determined on a sliding scale monthly.

4. The allegations of paragraph number four are admitted.

5. The allegations of paragraph number five are denied.

6. The allegations of paragraph number six are admitted.

7. The allegations of paragraph number seven are admitted.

Dated: August 14, 1953.

/s/ JAMES P. SHOVLIN, JR.,
Attorney for Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 18, 1953.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT TO CONFORM TO EVIDENCE PURSUANT TO RULE 15 (b)

Leave of court having been first obtained, the plaintiff files herewith his Amendment to Complaint to conform to the evidence.

As and for a further, separate and distinct cause of action, plaintiff alleges:

I.

Plaintiff incorporates herein by this reference, as

fully and completely as if set forth herein in full, all of the allegations contained in paragraphs I, II, III and VI of the complaint heretofore filed in the above action on August 5, 1952.

II.

At all times herein mentioned, up to and including September 30, 1952, the plaintiff was a tenant in possession of the housing accomodations described in paragraph III of said complaint filed herein on August 5, 1952.

III.

At all times herein mentioned the maximum lawful rent for said housing accommodations, pursuant to said Act and Regulations, was the gross monthly receipts from the operation of said premises as a motel less the sum of $500; the gross receipts from the operation of said premises for the month of March, 1952, were the sum of $944.00 and the maximum lawful rent for said month was the sum of $444.00; the gross receipts from the operation of said premises for the month of April, 1952, were the sum of $1,262.50 and the maximum lawful rent for said month was the sum of $762.50; the gross receipts from the operation of said premises for the month of May, 1952, were the sum of $2,462.00 and the maximum lawful rent for said month was the sum of $1,962.00.

IV.

The amount by which the rent so demanded, accepted and received by the defendants from the

plaintiff exceeded the maximum lawful rent for said housing accommodations was and is the sum of $2,-831.50; three times the amount by which the rent thus demanded, accepted and received exceeded the maximum lawful rent for said housing accommodations is the sum of $8,494.50.

Wherefore, plaintiff demands judgment against the defendants and each of them for the sum of $8,-494.50 as liquidated damages, for reasonable attorney fees in prosecuting this action, for costs of suit herein and for such other and further relief as may be just and proper.

MALONE & SULLIVAN,
/s/ RAYMOND L. SULLIVAN,
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed July 6, 1954.

[Title of District Court and Cause.]

MEMORANDUM OPINION AND ORDER

Plaintiff, lessee of a motel situated near Pleasanton, California, seeks to recover alleged overcharges of rental from defendants, owners and lessors of the motel.

The parties negotiated a lease in December, 1951, Defendants rented their newly constructed motel, which consisted of twenty-two rental units and a swimming pool to be built within a specified period.

The units were furnished by lessors and the kitchens were fully equipped. Lessors also provided linens and were obligated to replace them. The lessee undertook duties which were largely those of a manager.

Both plaintiff and defendants understood that the individual rental units were subject to rent regulation. Plaintiff registered the rooms in January, 1952, for a maximum rental for all units of $6,864.

Defendants believed that their master lease with plaintiff was not subject to rent control. They were so informed by Hynes & Bowser, their Oakland attorneys. Not until May of 1952, did they learn that they were required to register the premises with the Office of Rent Control. At that time they requested of the Area Rent Director that he decontrol the premises or fix a fair rental. This he sought to do under Rent Regulation 1, Section 166. The Rent Director failed to win approval of a decontrol recommendation; nor did he establish a maximum rent. The Advisory Board in Alameda County informed the Rent Director that there were no comparable housing accommodations in the area to serve as a yardstick for fixing maximum rent.

In June, 1952, defendants registered the master lease with the Office of Rent Stabilization in Hayward. For maximum rent they referred to the lease itself.

Under the terms of the master lease, plaintiff was required to pay as rental for the inaugural months of January and February of 1952, his gross receipts less $500 to be retained by him. Thereafter

he was to pay a minimum of $2,000 per month or his gross receipts less $500 whichever sum was greater.

Plaintiff entered the leasehold premises upon their completion about the middle of January, 1952, and paid no rental for that month. In February, in accordance with the terms of the lease, plaintiff paid $175 (through miscalculation this sum was $19 higher than the amount actually owed). For the subsequent months until October, 1952, when plaintiff surrendered his lease, he paid at least $2,000 per month regardless of gross receipts. Had the formula of gross receipts less $500 been applicable, he would have paid considerably less than this sum in March and April when the motel was still struggling to acquire tenants.

The parties do not dispute the facts. Based on the narrative of events, plaintiff contends that he is entitled to be reimbursed for overpayment of maximum rent in the sum of at least $2,831.50. He also contends that under a different interpretation of maximum lawful rent, he is entitled to the return of overcharges in the amount of $11,528. Plaintiff computes this latter sum by utilizing the figure of $175 per month as the maximum rent. This is the amount plaintiff paid for the first full month of occupancy, namely February, 1952. For the lesser figure, plaintiff uses the lease formula of gross receipts less $500 per month throughout the term of the lease. Under this formula the legal maximum varied from month to month as the gross income for the premises gradually increased. Plaintiff suffered substan-

tial losses in March and April of 1952, when he was compelled to pay the alternative minimum of $2,000 per month.

Plaintiff also asks for treble damages, contending that the overcharges were wilful and the result of failure to take practicable precautions against the occurrence of the violation. He points out that defendants made inquiry in December, 1951, before the premises were under control, and thereafter did nothing to ascertain the scope of the law until May, 1952. Defendants note that they not only consulted their counsel before entering into the leasehold agreement, but that they thereafter took numerous steps to have a maximum ceiling imposed by the rental authority or have the premises decontrolled in the alternative.

The record is clear that defendants took proper precautions to ascertain the law and to comply with with it. There is no basis for charging the them with a wilful violation of the rent control law.

Section 39(c) of the Rent Regulations covers a lease of an entire structure. Although previously inoperative, this section was effective at the time plaintiff's lease went into effect.

Section 93 of Rent Regulation 1 provides that the maximum rent shall be "the first rent for such accommodations after the maximum rent date . . ." Where rent is established by a lease and the provisions of the agreement call for higher rentals during the term of the lease, the lessor is entitled to petition for an adjustment under section 130.

Plaintiff contends that defendants could charge

no more than the rent fixed by the lease and collected by defendants during the first full month of occupancy under the lease rental formula, viz, gross receipts less $500.

Defendants look to Section 166 of the Regulations for relief. This section applies in instances of a dispute between landlord and tenant as to the maximum rental. It required the Director of the rental area to fix the maximum rent after determining the facts or to apply the maximum rental imposed for comparable housing in the area. Plaintiff denies the applicability of Section 166. He points out that as a matter of fact the Director fixed no maximum rent under this section. He further points out that the section itself did not require the Director to establish such a ceiling. He observes that there was no dispute as to the facts upon which the maximum rent would be determined.

Since the Area Rent Director failed to establish a maximum under Section 166 during the period of the application of rent regulations; since the rent control law terminated before the imposition of maximum rent—which could not have been made retroactive (Markbreiter v. Woods, 163 F.2d 993)—defendants argue that no ceiling existed. Accordingly, they assert that there could have been no payment in excess of a maximum rent prescribed and thus there could have been no overcharge.

There is no controlling authority on this subject. In order to make applicable plaintiff's legal theory that the first rent under the lease formula for the accommodations constituted the maximum under

the terms of the regulations (Sec. 93 of Rent Regulation 1), it would be necessary for the Court to adopt, quite arbitrarily, a part of the lease, to the exclusion of the other rental provisions in the same document which was tailored to meet a specific landlord-tenant commercial relationship. Adoption of the formula requires the Court to implement the regulations and to conjecture as to their scope.

It is conceded that no rent was paid the first month. Therefore, we must look to the lease for aid and assistance. The rental provisions cannot be segmented in order to fix a maximum. (Cf. OPA interpretation MR-1 issued July 7, 1942; Revised May 13, 1943; Pike & Fischer OPA Service, Vol. 8, p. 200:1115.) This Court is in no better position than the Area Rent Control Director was when he was petitioned to make a determination. Nor has the Court factors of comparable rental conditions to look to for guidance.

The precise problem does not involve abstract legal propositions, nor can it be disposed of by the application of the principles enunciated in United States v. McCrillis, 200 F.2d 884.

The maximum rental not having been declared or fixed in the first instance either by administrative process or judicial sanction or decree, any action fixing a maximum rental of an amount less than that called for in the rental clause of the lease would in effect result in retroactive procedure wherein plaintiff would receive an unwarranted refund. Rhodes v. Hanschl, 94 F. Supp. 1009 at 1010.

Judgment may be entered for defendants upon

presentation of findings of fact and conclusions of law.

Dated: September 17, 1954.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed September 17, 1954.

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED AMENDMENTS TO DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

James B. Doyle, the plaintiff above named, offers herewith and hereby files herein his Proposed Amendants to Defendants' Proposed Findings of Fact and Conclusions of Law, served on said plaintiff on October 1, 1954:

1. Amend finding of fact No. II, so that said finding shall read as follows:

"On December 31, 1951, the defendants, as lessors, entered into a written lease with the plaintiff, as lessee, under the terms and provisions of which the plaintiff leased from the defendants the said premises commonly known and designated as the El Rancho Santa Rita Motel, for a term of three years to commence January 1, 1952. The said premises which were the subject of said lease were not rented at any time prior to December 31, 1951. Said premises were housing accommodations."

2. Amend findings of fact No. III, by adding thereto as follows:

"The plaintiff remained in possession of said premises as the tenant of the defendants continuously from January 14, 1952, to and until September 30, 1952."

3. Amend finding of fact No. IV, so that said finding shall read as follows:

"Under the terms of the said lease executed by and between the defendants and the plaintiff, the plaintiff agreed to pay as rental for each of the first two months of the term—namely, for the months of January and February, 1952—the gross receipts from the plaintiff's operation of the said premises as a motel or motor court less the sum of Five Hundred and no/100 ($500.00) Dollars each month. Under the terms of said lease, the plaintiff agreed to pay as rental for each of the months of March through September, 1952, his gross receipts as aforesaid less the sum of Five Hundred and no/100 ($500.00) Dollars each month or the sum of Two Thousand and no/100 ($2,000.00) Dollars, whichever was the greater amount. The plaintiff operated said premises as a motel or motor court from January 14, 1952, until September 30, 1952. In the month of January, 1952, the gross receipts from the operation of the said premises by the plaintiff were less than Five Hundred and no/100 ($500.00) Dollars and no rent was paid for that month. In the month of February, 1952, the gross receipts from the operation of said premises by the plaintiff were Six Hundred Fifty-six and no/100 ($656.00) Dollars and

for the month of February, 1952, the plaintiff paid to the defendants the sum of One Hundred Seventy-five and no/100 ($175.00) Dollars as and for rent for said premises, there being a small overpayment of the rent payable under the lease arising *our* of mathematical mistake or miscalculation."

4. Strike out finding of fact No. V.

5. Strike out finding of fact No. VII.

6. Add the following Findings of Fact:

VIII.

At no time prior to October 1, 1952, did the Director of Rent Stabilization, or the Area Rent Director of the Defense-Rental Area of Southern Alameda County, or any other person or persons appointed or designated by the Director of Rent Stabilization to carry out any of the duties delegated to him pursuant to the Housing and Rent Act of 1947, as amended, make or issue an order fixing, increasing or otherwise adjusting the maximum rent allowable for the said premises which were the subject of said lease between the defendants and the plaintiff.

IX.

Under the terms and provisions of the said lease between the defendants and the plaintiff, the plaintiff, as tenant, had no power to cancel or otherwise terminate the said lease prior to October 1, 1952.

X.

All of the individual housing accommodations in the said premises so leased by the defendants to the plaintiff, consisting of individual rooms and units in a motor court or motel, were controlled housing accommodations and were subject to the provisions of Rent Regulation 2.

XI.

The gross receipts from the plaintiff's operation of the said leased premises as a motor court or motel were as follows: During the month of March, 1952, the sum of Nine Hundred Forty-four and no/100 ($944.00) Dollars; during the month of April, 1952, the sum of One Thousand Two Hundred Sixty-two and 50/100 ($1,262.50) Dollars; during the month of May, 1952, the sum of Two Thousand Four Hundred Sixty-two and no/100 ($2,462.00) Dollars; during the months of June through August, 1952, gross receipts in each month were not less than Two Thousand Five Hundred and no/100 ($2,500.00) Dollars. Within one year immediately prior to the commencement of this action the defendants demanded, accepted and received from the plaintiff as rent for the said housing accommodations leased from the defendants to the plaintiff the following sums: The sum of Two Thousand and no/100 ($2,000.00) Dollars as and for rent for the month of March, 1952; the sum of Two Thousand and no/100 ($2,000.00) Dollars as and for rent for the month of April, 1952; the sum of Two Thousand and no/100 ($2,000.00) Dollars as and for rent for the month of

May, 1952; the sum of Two Thousand Four Hundred Thirty-three and no/100 ($2,433.00) Dollars as and for rent for the month of June, 1952; the sum of Two Thousand and no/100 ($2,000.00) Dollars as and for rent for the month of July, 1952; and the sum of Two Thousand One Hundred Forty-five and no/100 ($2,145.00) Dollars as and for rent for the month of August, 1952.

XII.

The plaintiff has been required to employ and has employed counsel to institute, maintain and prosecute this action against the defendants. Reasonable attorney's fees are $.....

Conclusions of Law

7. Strike out defendants' proposed conclusions of law.

8. Add the following conclusions of law:

I.

The Court has jurisdiction of the subject matter of this action and the parties hereto.

II.

The housing accommodations leased by the defendants to the plaintiff under the lease hereinabove referred to in the findings of fact were controlled housing acommodations within the meaning of Rent Regulation 1 (Housing Rent Regulation) issued pursuant to the Housing and Rent Act of 1947, as amended.

III.

At all times between January 14, 1952, which was the effective date of Rent Regulation 1 (Housing Rent Regulation) as to the Southern Alameda County Defense-Rental Area, and September 30, 1952, the maximum lawful monthly rent for the said premises leased by the defendants to the plaintiff was the sum computed each month by taking the gross receipts from the plaintiff's operation of a motor court or motel on the leased premises and deducting therefrom the sum of Five Hundred and no/100 ($500.00) Dollars; the maximum lawful rent for the said premises for the month of March, 1952, was the sum of Four Hundred Forty-four and no/100 ($440.00) Dollars; the maximum lawful rent for the said premises for the month of April, 1952, was the sum of Seven Hundred Sixty-two and 50/100 ($762.50) Dollars; the maximum lawful rent for the said premises for the month of May, 1952, was the sum of One Thousand Nine Hundred Sixty-two and no/100 ($1,962.00) Dollars.

IV.

The amounts demanded, accepted and received by the defendants from the plaintiff as and for rent for said premises exceeded the maximum lawful rent for said premises as follows: For the month of March, 1952, the sum of One Thousand Five Hundred Fifty-six and no/100 ($1,556.00) Dollars; for the month of April, 1952, the sum of One Thousand Two Hundred Thirty-seven and 50/100 ($2,137.50)

Dollars; for the month of May, 1952, the sum of Thirty-eight and no/100 ($38.00) Dollars.

V.

Plaintiff is entitled to recover from defendants three times the amount of single overcharges, namely, the sum of Eight Thousand Four Hundred Ninety-four and 50/100 ($8,494.50) Dollars and, in addition thereto, reasonable attorney's fees in the amount of $.....

These Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law are offered pursuant to Rule 5(e) of the Rules of Practice of the District Court of the United States, for the Northern District of California, and pursuant to the Rules of Civil Procedure for the District Courts of the United States, and are based upon all the evidence, oral and documentary, records and files in said action.

Dated: October 6, 1954.

MALONE & SULLIVAN,
/s/ RAYMOND L. SULLIVAN,
/s/ WILLIAM J. DOWLING, JR.,
Attorneys for Plaintiff.

Receipt of Copy acknowledged.

Lodged October 6, 1954.

[Endorsed]: Filed October 6, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause coming on for trial on the 24th day of June, 1954, having been tried before the Court, William Dowling appearing as Counsel for the Plaintiff, and Marvin G. Giometti appearing as counsel for the Defendants, and after hearing the allegations and proofs of the parties, the arguments of counsel and being fully advised in the premises, the following Findings of Fact and Conclusions of Law constituting the decision of the Court in said action, are hereby made:

Findings of Fact

I.

That Defendants were the owners of certain housing accommodations in the Township of Pleasanton, County of Alameda, State of California, within the defense-rental area of Southern Alameda County, said housing accommodations were, and are, located on Santa Rita Road between the town of Pleasanton, California, and the intersection of Santa Rita Road with Highway 50 in Alameda County in California, approximately one mile from Pleasanton, California, and approximately one and one-half miles from the said intersection of Santa Rita Road with Highway 50. Said housing accommodations are, and were, commonly known and designated as the El Rancho Santa Rita Motel.

II.

That on the 31st day of December, 1951, the Defendants leased said premises to the Plaintiff.

III.

That the construction of said Motel was completed on January 14, 1952, and on said date the Plaintiff entered into physical possession of said premises.

IV.

Under the terms of the lease executed by and between Defendants and Plaintiff, Plaintiff was to pay as rental for the inaugural months of January and February of 1952, his gross receipts less Five Hundred ($500.00) Dollars to be retained by him. Thereafter he was to pay a minmum of Two Thousand ($2,000.00) Dollars per month or his gross receipts less Five Hundred ($500.00) Dollars, whichever sum was greater. Plaintiff paid no rental for the month of January. In February, Plaintiff paid a rental of One Hundred Seventy-five ($175.00) Dollars. For the subsequent months until October, 1952, at which time Plaintiff surrendered his lease, he paid at least Two Thousand ($2,000.00) Dollars per month regardless of gross receipts.

V.

Both Plaintiff and Defendants understood that the individual rental units were subject to rent regulations. Plaintiff registered the individual rental units in January, 1952, for a maximum rental for

all units of Six Thousand Eight Hundred Sixty-four ($6,864.00) Dollars.

VI.

In June, 1952, Defendants registered the Master Lease with the Office of Rent Stabilization in Hayward. For maximum rent they referred to the lease itself.

VII.

Defendants believed that their Master Lease with Plaintiff was not subject to rent conrol. Defendants did not learn that they were required to register the premises with the Office of Rent Control until May, 1952. At that time, they requested of the Area Rent Director that he decontrol the premises or fix a fair rental. This he sought to do under Rent Regulation 1, Section 166. The Rent Director failed to win approval of a decontrol recommendation and he did not establish a maximum rent. The Advisory Board in Alameda County informed the Rent Director that there were no comparable housing accommodations in the Area to serve as a yardstick for fixing maximum rent. Controls expired during this period and therefore no maximum rent was ever fixed for said premises.

Conclusions of Law

I.

The maximum rental not having been declared or fixed in the first instance either by administrative process or judicial decree, any action fixing a maximum rental of an amount less than that called for in

the rental clause of the lease would, in effect, result in retroactive procedure wherein Plaintiff would receive an unwarranted refund.

II.

That Defendants are entitled to Judgment against the Plaintiff.

III.

That Defendants are entitled to Judgment for their costs and disbursements incurred or expended herein.

Let Judgment be Entered Accordingly.

Dated: This 12th day of October, 1954.

/s/ GEORGE B. HARRIS,
Judge of the United States
District Court.

Receipt of Copy acknowledged.

Lodged October 2, 1954.

[Endorsed]: Filed October 12, 1954.

United States District Court for the Northern District of California, Southern Division

No. 31723

JAMES B. DOYLE,

Plaintiff,

vs.

OLIVER A. FOX, J. E. PATTERSON, and COREY GABRIELSON,

Defendants.

JUDGMENT

The above-entitled cause came on regularly for trial before the Court sitting without a jury on the 24th day of June, 1954, Marvin G. Giometti, Esq., appeared as attorney for Defendants and William Dowling, Esq., appeared as attorney for Plaintiff, and, the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that Judgment be entered in accordance therewith; Now, Therefore, by reason of the law and findings aforesaid:

It Is Ordered, Adjudged and Decreed:

That Plaintiff take nothing by his Complaint and supplemental complaint and that Defendants be awarded their costs herein.

Dated: This 12th day of October, 1954.

/s/ GEORGE B. HARRIS,
Judge of United States
District Court.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 12, 1954.

Entered October 13, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that James B. Doyle, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment heretfore filed and entered in this action on October 13, 1954.

Dated: November 5th, 1954.

MALONE & SULLIVAN,
/s/ RAYMOND L. SULLIVAN,

/s/ WILLIAM J. DOWLING, JR.,
Attorneys for Plaintiff,
James B. Doyle.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 8, 1954.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

Whereas, the Plaintiff in the above-entitled action is about to appeal to the United States Court of Appeals for the Ninth Judicial Circuit, from a judgment, entered against him in said action on October 13, 1954, in said United States District Court for the Northern District of California, Southern Division, in favor of the defendants in said action.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned American Surety Company of New York, a corporation duly organized and existing under the laws of the State of New York, and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellant, that the appellant will pay all costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding the sum of Two Hundred Fifty ($250.00) Dollars, to which amount it acknowledges itself bound.

In case of a breach of any condition hereof, of the above-entitled Court may, upon notice to said American Surety Company of New York, surety hereunder, of not less than ten days, proceed summarily in the above-entitled action or proceeding to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefrom against said surety and award execution therefor.

In Witness Whereof, the corporate seal and name of said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officers, this 2nd day of November, 1954.

[Seal] AMERICAN SURETY
COMPANY OF NEW YORK.

By /s/ F. E. BUCKINGHAM,
Res. Vice President.

Attest:

/s/ E. C. SCHOLZ,
Res. Asst. Secretary.

Bond No. 35-541-531.
Premium $10.00 per annum.

State of California,
City and County of San Francisco—ss.

On this 2nd day of November in the year one thousand nine hundred and fifty-four before me, Shirley M. Conrad, Notary Public in and for said City and County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared F. E. Buckingham and E. C. Scholz, known to me to be the Resident Vice-President and Resident Assistant Secretary respectively of the

American Surety Company of New York, the corporation described in and that executed the within and foregoing instrument, and known to me to be the persons who executed the said instrument on behalf of the said corporation, and they both duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, the day and year in this certificate first above written.

[Seal] /s/ SHIRLEY M. CONRAD,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires February 23, 1958.

[Endorsed]: Filed November 8, 1954.

In the District Court of the United States for the Northern District of California, Southern Division

No. 31723

JAMES B. DOYLE,

Plaintiff,

vs.

OLIVER A. FOX, J. E. PATTERSON and COREY GABRIELSON,

Defendants.

REPORTER'S TRANSCRIPT
June 24, 1954

Appearances:

For the Plaintiff:
MALONE AND SULLIVAN, by
WILLIAM J. DOWLING, JR., ESQ.

For the Defendants:
MARVIN G. GIOMETTI, ESQ.

The Court: You may proceed.

Mr. Dowling: If your Honor please, I may say by way of introductory observation that, with your Honor's permission, I think that Mr. Giometti and I can substantially agree as to what the facts are in this case and submit to your Honor ultimately possibly one or two limited facts and the issue of law, which is the important one, I think, to be resolved. Would your Honor appreciate approach to the problem along those lines?

The Court: You proceed in any fashion you wish. Any mode of presentation that you have is agreeable to me. I never try to guide the order of proof. I have enough trouble trying to guide myself most of the time.

Mr. Dowling: I might with your Honor's permission present to you briefly the picture as I see it. The case here involves the underlying master lease of motel premises which were situated in the Township of Pleasanton in Southern Alameda, the Southern Alameda Defense Rental Area. The individual units in the motel, of course, were leased out to sub-tenants by the master lessee, who is the plaintiff in this case. The underlying lease is subject to rent control, and I think the defendants are now prepared to concede that, is that not correct?

Mr. Giometti: Yes, that is correct, your Honor, subject to rent control under Section 39(c) of Rent Regulation 1. [2*]

Mr. Dowling: In that connection, for purposes of the record, and with your Honor's permission and

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

counsel's, may we introduce the lease in evidence?

Mr. Giometti: Yes.

The Court: That may be marked. That is the original lease?

Mr. Dowling: That is the original lease, if your Honor please.

(Thereupon the lease referred to was received in evidence and marked Plaintiff's Exhibit No. 1.)

Mr. Dowling: Secondly, if your Honor please, I think we are in agreement as to the actual amounts which were paid as rent during the period in question. The answer on file here concedes that the defendant received the amounts alleged in the complaint and supplemental complaints. The answer does not go so far as to concede that the amounts were received for the particular housing accommodations in question, although I assume that will be conceded.

Mr. Giometti: That is correct.

Mr. Dowling: Will it also be conceded, Mr. Giometti, that they were received as rental for the monthly periods alleged?

Mr. Giometti: Yes.

Mr. Dowling: So there is no question, if your Honor please, either as to the amounts of rent which have been received by the defendant. The only question arises out of what is the [3] lawful maximum rent, if any, for these premises? It is the contention of the plaintiff that pursuant to Section 93 of the Rent Regulations for Housing, the maximum rent was the first rent for these premises, that upon the

factual basis that the premises were not rented upon the maximum rent date, which was November 1st, 1951. That is correct, is it not, Mr. Giometti?

Mr. Giometti: That is correct, yes.

Mr. Dowling: They were not rented on that date because they were still under the course of construction on that date, as a matter of fact, isn't that right?

Mr. Giometti: That is right.

Mr. Dowling: That the first rental of these premises at any time was rental reflected by the lease which is Plaintiff's No. 1 in evidence. The plaintiff contends that the maximum rent is the first rent, and that is pursuant to Section 93. Your Honor will note that the lease provides for a rental to be determined by a formula. There is a copy of the lease attached to the defendant's answer, if your Honor please.

The Court: I have it.

Mr. Dowling: And that for the first two months of the term, from the commencement of the lease, that is, January 1 of 1952 until the end of February, 1952, the lessee shall pay to the lessor as rent the whole amount of gross receipts less $500. Subsequent to the first two-month period a new [4] formula comes into operation. Under the lease from March 1st, 1952, to and including September 30th, the lessee shall pay the gross less $500, or $2,000, whichever is greater. Pursuant to the provisions of the lease the plaintiff actually paid $175 as rent in March for the month of February, 1952. Will that be conceded, Mr. Giometti?

Mr. Giometti: That that was the amount paid?

Mr. Dowling: That that was the amount paid in March for February. It is the plaintiff's contention that that is the maximum lawful rent, the first rent paid. There is a discrepancy, if your Honor please, between that figure and the figure pleaded in the complaint because of a mathematical error in computing the gross during one of those months. I will put the plaintiff on to testify to that, if you wish.

Mr. Giometti: I do not think that that is necessary.

Mr. Dowling: In the alternative it is the plaintiff's contention that the maximum lawful rent is the formula which was fixed for the months of January and February, namely, the gross less $500.

The Court: $500 being regarded as the——

Mr. Dowling: As the expenses of operation. I have here, if your Honor please, records of receipts kept at the motel premises by the plaintiff or by his employees. Mr. Giometti has seen these. Shall I put Mr. Doyle on to identify them?

The Court: I might take a short recess. Any other [5] documents you have you may discuss with counsel.

(Recess.)

Mr. Dowling: If your Honor please, I have in my hand a composition-type spiral ringbound book, which bears on the first page the title "Rancho Santa Rita," and which book was to be a record of the cash receipts of the sub-tenancies at the El

Rancho Santa Rita Motel for the period of January 19th to June 3rd, I believe.

It will be stipulated, I understand, that if Mr. Doyle were called to testify, he would testify that this record was kept in the usual course of the business of the Santa Rita Motel, that it was usual and ordinary for that business to keep records of the receipts from the tenants, and that the entries were made at or about the time the transactions took place. Is that correct?

Mr. Giometti: That is correct.

The Court: It may be marked.

Mr. Dowling: We offer this as plaintiff's next in order.

(Whereupon the cash receipt book referred to was received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Dowling: I have also in my hand—and this is purely for the convenience of the Court and of counsel—a summary of the daily receipts as reflected by that book for the period of the months of January through May, 1952. [6]

The Court: That may be marked as a summary.

(Whereupon summary of daily receipts was received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Dowling: I have only one further request of your Honor in connection with the plaintiff's case, and that is in view of the possibility that the maximum rent here may be determined to be the formula provided by the lease instead of the dollars and

cents first rent, I might ask the Court for leave to file an amendment to the complaint to conform to the evidence in that respect.

The plaintiff will rest.

Mr. Giometti: If your Honor please, it has been stipulated between counsel that the defendant's answer on page 3, paragraph 3, may be amended on its face, if that meets with the Court's approval, to add the following statement, that the overcharge, if any there was, was not willful or the result of failure to take proper precautions. May that be so amended on its face?

The Court: So ordered.

Mr. Giometti: To summarize the position of the defendants on this issue, your Honor, I might say we have here a motel of considerable value, in excess of $100,000, which had 22 units, swimming pool, etc., and included, in addition to the motel units themselves, additional acreage outside of the units. As is indicated in this lease, a computation was made for the [7] rentals. In other words, the first two months were the take of the motel less the sum of $500. After that there was a certain fixed sum, as the lease will indicate.

It has been the contention of plaintiff, as announced here, that their position was that under Section 93 of Rent Regulation No. 1 the first rent paid was the rental for the premises, and therefore, instead of the rent as provided by the lease, the maximum rent established for those premises is the sum either of $175 for the entire term of this lease, or the formula computation as they have indicated.

It is the contention of the defendant here that under the regulations we concede, first of all, that the premises are subject to control under 39(c), so that your Honor will not have to go into that. It applies in a very technical period. In other words, if this lease had been entered into on January 15th, the underlying lease would not have been subject to control. So it is a sort of freak situation where the premises themselves, because they were constructed within a certain period of time, and because leased within this two and a half month period they happen to fit under control. If they had not been leased or finished construction in any other period of time they would not have been under control.

So far as the rental itself is concerned, 39(c) provides that it is subject to control. That we concede. The regulations themselves provide, your Honor, under Section 166 of [8] Rent Regulation No. 1, that where the rent is not known, then it is incumbent upon the director to determine a maximum rent, and under the stipulations if the maximum rate is not established, then we have no maximum rent and, accordingly, then there would be no case as far as the plaintiff is concerned, because there is no provision under the regulation to go back to make retroactive a maximum rent.

So the position, then, briefly, of the defendants in this issue is that no maximum rent was ever

established, and that under Section 166 of Rent Regulation No. 1, that the rent was in doubt because of the terms of the lease, and accordingly there is no maximum rent. That is basically the position of the defendants in this issue, your Honor, so far as the law is concerned.

In addition thereto, I have certain documents here which were received from the General Services Administration, a couple of letters in here that went to the Regional Board, the rent registration of the landlord that was filed June 9th, 1952, and the rent registrations that were filed on the individual units by the plaintiff in this case. The stipulation between myself and Mr. Dowling in this respect is that Mr. Dowling waives any formal objection except as to the relevancy of this material.

Mr. Dowling: Our position is this, if your Honor please: the documents are incompetent, irrelevant and immaterial to [9] bear upon the question of what the lawful maximum rent was. I think they might very well be material with reference to the issue of the Chandler defense. I have no objection to their being admitted for that purpose. I do object to their admissibility for any purpose that would tend to have any bearing on the establishment of the maximum rent.

The Court: That may be marked.

(Whereupon the material referred to was received in evidence and marked Defendant's Exhibit A.)

Mr. Giometti: If your Honor please, at this time I would like to call to the stand Mr. Oliver Fox.

OLIVER A. FOX

one of the defendants herein, was called on behalf of the defendants, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: Please state your name, your address and your occupation to the Court.

A. Oliver Fox. I live at 8421 Ney Avenue, Oakland, and I do maintenance work at the motel.

Direct Examination

By Mr. Giometti:

Q. Mr. Fox, are you one of the owners of the El Rancho Motel, Pleasanton, California?

A. Yes. [10]

Q. That is the motel that is the subject of this present controversy, is that correct? A. Yes.

Q. Were you the owner of that motel or one of the owners of that motel on January 1st, 1952?

A. Yes.

Q. Who were the other owners of that motel?

A. Mr. Corey Gabrielson and J. E. Patterson.

Q. Would you describe that motel to the Court, please?

Mr. Dowling: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Dowling: To any issue now pending before the Court.

(Testimony of Oliver A. Fox.)

The Court: Overruled. I would like to have a description of the motel.

A. Twenty-two unit motel, built in a U shape with a swimming pool in the center, first class construction and quality throughout.

The Court: Twenty-two units?

A. Yes, your Honor.

Q. (By Mr. Giometti): Can you describe the individual units to the Court, Mr. Fox?

A. You mean the size of them? How do you mean?

Q. Rooms, etc.

A. In the single rooms it is one large room with a full tile [11] bath. It has asphalt tile on the floor.

Q. How many single rooms are there?

A. There are 11.

Q. Do you have multiple units?

A. There are three that have two-room units, and the second room in the three consists of a kitchen, an all-General Electric kitchen, electric stove, refrigerator, and bedroom would be the same as the single rooms, and then there are eight three-room units, two bedrooms and kitchen.

Q. Will you describe the swimming pool, Mr. Fox?

A. It was built according to the Health Department, 22 feet wide by 60 feet long with a filter system to take care of it.

Q. Is there anything else on the premises?

A. No, that is about all.

Q. At the time of this lease the premises were furnished, is that correct?

(Testimony of Oliver A. Fox.)

A. At the time the lease was drawn I do not think the furniture was in, but it was put in shortly afterwards.

Q. You supplied the furniture to the lessee, and that description of furniture is attached to the lease which is in evidence, your Honor, and the furnishings included also linens, is that correct?

A. Yes, sir.

Q. Mr. Fox, when did you first receive any rental on the premises or on the El Rancho Motel from Mr. Doyle? [12]

A. About February 8th or 9th, I believe. I am not positive on the exact date, but I believe you have it in your records there.

Q. Let me ask you this, Mr. Fox: Did you receive any rental from Mr. Doyle for the month of January? A. No, sir.

Q. Did you receive some rentals for the month of February?

The Court: When did they go into possession?

Mr. Giometti: January 1st, your Honor.

The Court: 1953?

Mr. Giometti: That is correct, your Honor.

Q. Did you receive some rental then in the month of February? A. Yes, sir.

Q. You likewise received rental throughout the period in dispute here, is that correct?

A. Yes, sir, for the first eight months.

Q. That is correct, but you did not receive anything for the month of January? A. No, sir.

(Testimony of Oliver A. Fox.)

Q. Mr. Fox, at the time that you entered into this lease with the plaintiff, Mr. Doyle, were you aware as to whether or not these premises were subject to rent control?

A. We were aware that the rooms were subject to rent control, but we were told by the OPS rent director in Hayward that the lease was not under control. [13]

Q. In other words, at the time of the execution of this lease you did not know that the premises were subject to rent control, is that correct?

A. That is right.

Q. Can you advise the Court as to the date when you made the inquiry referred to of the Hayward Rent office as to the control of the master lease?

A. Could I refer to a piece of paper here? I have that date written down, I think. It was around in May, May 9th, if I am not mistaken.

Q. Did you ever have any conversation prior to that time? A. With the Rent Office?

Q. That is correct, in Hayward.

A. Yes, before the lease was written.

Q. When was that?

A. It would be the latter part of December.

Q. Of what year? A. 1951.

Q. What were you informed at that time?

A. That there was not any control.

Q. Of whom did you make that inquiry?

A. Well, the girl—Mr. Gabrielson is the one that actually did the phoning on that and the girl at the desk inquired and told him.

(Testimony of Oliver A. Fox.)

Q. Did you employ an attorney to assist you in drafting the [14] lease, Mr. Fox?

A. Yes, sir.

Q. Between you, Mr. Gabrielson, Mr. Patterson and Mr. Doyle? A. Yes, sir.

Q. Who was that attorney, Mr. Fox?

A. Mr. Bowser of Hynes and Bowser in Oakland.

Q. What date did you say that you employed him to perform those services for you?

A. Approximately September 15th.

Q. Of what year? A. 1951.

Q. Did you ever get together with Mr. Bowser to discuss this lease on this subject in December, 1951?

A. On several occasions.

Q. Take the first occasion. I take it that was in December, 1951? A. That is right.

Q. And who was present at that time?

A. Well, Mr. Gabrielson, Mr. Patterson, myself, Mr. Bowser, and his associate—right now his name slips my mind—and they advised us at that time, Mr. Bowser did, that they had checked with the Rent Control Office and there was no control over the lease.

Q. When did you first learn, Mr. Fox, that these premises were subject to rent control? [15]

A. Well, we actually never did learn that they were subject to rent control. We heard about Mr. Doyle threatening us on several occasions.

The Court: When in point of time, the first oc-

(Testimony of Oliver A. Fox.)

casion? A. Around April and the 1st of May.

Q. 1952?

A. Right, yes, your Honor. So we went to check with the Rent Control office again, and at that time he told us the lease was not under control, that Mr. Doyle had been in to see him several times, telling him that it was under control, that Mr. Hyne told us that, as far as they could figure out, it was not under control, but he advised us that we should file an OPS form in case they ever were under control, that we would have that on record.

Q. Did you file such a form?

A. Yes, that was filed around the 1st of May.

Q. Did you ever request at this time the Hayward Rent Office to establish a maximum rent on those premises?

A. We requested at that time for them to do it, and also twice after that, and they told us that it was too complicated for them, that they had referred the matter to San Francisco, and that they were in no position whatsoever to put a maximum rent on the place. And we also went to see Mr. Goldbaum, who is the head of the Rent Office in San Francisco, and he also told us that it was too complicated for him and that he had [16] referred it to Washington.

Q. To your knowledge, was any maximum rent ever established on the premises?

A. No, there was never any maximum rent set, although we asked them several times, and when we filed our application, and later we asked Mr. Hyne,

(Testimony of Oliver A. Fox.)

the head of the Rent Office in Hayward, what we should do about the rent, and he said by all means go ahead and collect it, the $2000 a month or whatever the rent came to——

The Court: Pardon me. Will you go back a second. I missed part of that answer.

Q. You received $2000, and what was that?

A. Mr. Hyne told us to collect the rent called for under the lease.

Q. You submitted the lease to him?

A. Yes, your Honor, because he said if there was any rent control later on, it could be adjusted then. But he said as far as he could ascertain, there would never be any rent control, and his office refused to set the rent control on it, or the maximum rent.

Q. (By Mr. Giometti): Showing you this photograph, will you tell the Court what that photograph is, Mr. Fox?

A. It is an aerial photograph of the motel about four months after—well, it would be around in February or March.

Q. Of what year? [17] A. 1952.

Q. Are you certain of that date?

A. Yes, this would be in 1952. Excuse me. 1953.

Q. Referring to this photograph, may I ask you this question: Does this represent the premises as they were at the time the premises were leased to Mr. Doyle?

A. Not quite. The swimming pool was not put in until June, and the back section here was an addition that we started in 1953, the early part of 1953.

Q. Other than that, that represents accurately

(Testimony of Oliver A. Fox.)

the premises as they were at the time that they were leased to Mr. Doyle, is that correct?

A. Yes, the swimming pool was not in, nor the lawn around the swimming pool. Outside of that it is almost the same.

Mr. Giometti: I would like to offer this in evidence.

The Court: It may be marked.

(Whereupon the photograph referred to was received in evidence and marked Defendant's Exhibit B.)

Mr. Giometti: I have no further questions. Thank you.

Cross-Examination

By Mr. Dowling:

Q. Mr. Fox, directing your attention to this photograph, which is Defendant's Exhibit B in evidence, you have already testified, I believe, that these rear buildings were not there? [18]

A. That is right.

Q. As a matter of fact, his tenancy terminated on the 1st of October, 1952, so that will be clear?

A. Right.

Q. The swimming pool went in, according to your recollection, some time late in June?

A. I think it was finished around the 1st of July.

Q. Actually it was well into July before it was usable, isn't that correct?

A. No, I am sure the water was in by the 4th of July. That I know for sure.

(Testimony of Oliver A. Fox.)

Q. The place was not landscaped by that time, was it?

A. The lawn was in the process of being planted at that time.

Q. It was covered by sawdust and other agents to keep it moist? A. Shavings, yes.

Q. The driveway appears to be paved in that photograph. It was not paved at any time while Doyle was in occupancy, was it?

A. It was paved in September when he was still in occupancy.

Q. Shortly before he terminated his tenancy?

A. Yes.

Q. In response to one of Mr. Giometti's questions you said a few minutes ago that no maximum rent was ever set on this property. What you meant, I assume, Mr. Fox, was that the Area Rent Director never made an order fixing the maximum rent, [19] is that what you meant to say?

A. No, they refused to set a maximum rent.

Q. That is correct, is it not, the Area Rent Director never made an order fixing the maximum rent for these premises?

A. Would that be the Hayward office, the Area Rent Director?

Q. The Area Rent Director at Hayward or any other office of the Office of Price Stabilization.

A. That is right, they refused to set an amount.

Q. So no order fixing rent for these premises was ever made by the Rent Director at Hayward.

(Testimony of Oliver A. Fox.)

to your knowledge? A. That is right.

Q. So far as you know, no such order was made by any other official of the Office of Rent Stabilization? A. That is right.

Q. So that no order fixing rent was made pursuant to the provisions of Section 166 that Mr. Giometti has mentioned here in court; that is correct, is it not?

A. Would you repeat that question?

Q. I will withdraw it, Mr. Fox. When this lease was signed, that was on the date it bears, was it, December 31st, 1951? A. Yes, sir.

Q. The term of the lease started January 1st, 1952, is that correct? A. Right.

Q. Actually the tenant did not go into occupancy until some [20] time beyond the middle of January; that is correct, too, isn't it?

A. The motel was not open until around the 21st.

Q. Around the 20th of January—19th or 20th. That furniture was not even in on January 1st, was it?

A. It may not have been in the rooms but it was there at the time.

Q. At the time that this lease was signed, or let us go back to the time when you were discussing it with Mr. Bowser, around the middle of December; you made some inquiries at that time, did you, and found that the rooms were under control?

A. Mr. Gabrielson talked to the Rent Office and we were advised at that time—now—that the rooms

(Testimony of Oliver A. Fox.)

were under control or going to be under control. I am not positive which that was. Mr. Doyle told us that he had all the connections with the Rent Control office and that he would take care of listing it with the OPS. And that was one of the main reasons he wanted a lease drawn up and ready for him to take over before the place was finished, so that he could take care of all the OPA regulations.

Q. Did you have any conversations with Mr. Bowser around the middle of December in connection with whether or not this master lease would be subject to rent control? A. Yes, sir.

Q. At the time that you had those conversations with Mr. [21] Bowser were you advised by him that the individual rooms were subject to rent control at that time?

A. He told us that—I'm not positive whether we discussed the individual rooms, but we thought they were under control or going to be under control on the individuals rooms, but he advised us that the master lease was not under control.

Q. You do not have any recollection, though, as to whether he advised you with reference to the individual rooms?

A. No, I can't say for sure that we had, but I know we talked about it.

Q. When did you first talk to Mr. Hyne?

A. My first conversation with Mr. Hyne was around the 1st of May, I believe.

Q. Mr. Hyne was the Area Rent Director of the Hayward Office, was he not?

(Testimony of Oliver A. Fox.)

A. On the 1st of June was my first conversation, around the 1st of June.

Q. May I see that paper that you are using, Mr. Fox?

A. Sure. (Handing document to Mr. Dowling.)

Q. Prior to June did Mr. Gabrielson have any conversations with Mr. Hyne in your presence?

A. No, sir.

Q. So that as far as you are concerned personally, you did not have any conversations with anybody about whether or not the master lease was subject to control between some time in [22] mid-December, when you talked to Mr. Bowser, and the 1st of June, when you talked to Mr. Hyne, is that correct? A. Would you repeat that question?

(Question read.)

A. No, we talked it over between ourselves, Gabrielson and Patterson and myself and Mr. Bowser, the attorney.

Q. You had further conversations with Mr. Bowser after the middle of December and before the 1st of June?

A. Between the middle of December and the end of December, when the lease was consummated.

Q. What about between the end of December, or, say, the 1st of January, 1952, and June 1st, 1952: Did you have any conversations with Mr. Bowser about whether the master lease was subject to control? A. No, sir.

Q. So you personally then had no conversa-

(Testimony of Oliver A. Fox.)

tions with anybody except your co-defendants and co-owners? A. That is right.

Q. You did not make any inquiries of the Rent Office before the 1st of June, you yourself?

A. No, it was around the 1st of June or the last of May.

Q. The last of May or the 1st of June?

A. Before we inquired again.

Q. Is it your recollection that Mr. Hyne told you that he did not know whether this place was subject to control or not? [23]

A. Well, he said that it was not controlled at that time, but then later on Mr. Goldbaum in San Francisco either talked to him on the telephone or wrote him a letter, I am not sure which, about some section in the book about where this might be under control. That would be prior to June 9th, when we filed the OPA regulation form.

Q. So that by the time that you filed that rent registration form you were advised that the master lease was subject to control, is that right?

A. No, we were advised that it was not, but he had told us that we had better fill it out, just to have it on record, but at no time were we advised by either Mr. Hyne, Mr. Goldbaum, or our attorney that the place was ever under control.

Q. You knew, of course, that if the master lease was not subject to control under the rent regulations you did not have to file a rent registration statement; you knew that, didn't you?

A. No, I did not know it, no.

(Testimony of Oliver A. Fox.)

Q. Were you under the impression in May or June, 1952, that you had to file a rent registration statement for premises which were not subject to control? A. Repeat that question.

(Question read.)

A. No, we were not under the impression that we had to file one, but Mr. Hyne suggested that we file one at that time in [24] case the place ever was under control later on.

Q. It is your testimony, then, that Mr. Hyne told you that even though it was not under control, you should file a rent registration statement?

A. Well, that was after this controversy came up about whether it was under control or whether it was not under control. He said it was not—to his knowledge it was not under control, but he said being as this has come up, we had better file a rent registration.

Q. Was that in May, 1952?

A. Yes, I believe it was in May.

Q. So that in May, 1952, Mr. Hyne did not tell you that it was not subject to control, did he? He told you that it might be subject to control?

A. Well, he didn't say that it might be. He said that to his knowledge it was not, but he said they were waiting for some ruling from Washington to find out whether the place was under control or whether it was not under control.

Q. Despite the fact that it was not under control,

(Testimony of Oliver A. Fox.)

that nevertheless you should file a rent registration statement? A. Yes, on his advice.

Q. How many conversations did you have with Mr. Hyne about this—you personally now?

A. Two or three.

Q. Where did those conversations take [25] place? A. In his office in Hayward.

Q. Who was present on the occasion of the first one? A. Mr. Gabrielson.

Q. And yourself? A. And myself.

Q. And Mr. Hyne? A. That is right.

Q. Just the three of you. When did that take place? A. Around the 1st of May.

Q. Of 1952? A. Yes.

Q. What prompted you to go to Mr. Hyne at that time? Did Doyle tell you that he felt the master lease was under control?

A. No, he never at any time told us anything about it, but we found—Mr. Gabrielson happened to be working in the office of one of the board directors and he told them there was some controversy over the motel, and that is the reason that we went down to file.

Q. The matter of whether this master lease was under control had not been discussed since the end of December, 1951. You had not, and neither had Mr. Gabrielson or Mr. Patterson, to your knowledge, made any inquiries of the Rent Director prior to May 1 as to whether the master lease was subject to control? A. That is right, we did not.

(Testimony of Oliver A. Fox.)

Q. You just did not give it a thought up to that time? [26]

A. That is right. We had already checked. They said it was not, and so we didn't check on it any further.

I might also mention in here, in March, April and May, during those months, that Mr. Doyle made many threats about us playing ball with him about the rent.

The Court: What did you say?

A. Mr. Doyle made many threats about our playing ball with him about the rent. He said if we didn't, we would regret it. They knew something that we didn't know.

Q. What do you mean by "play ball"?

A. He wanted us to cut the rent down.

Q. When?

A. During March, April and May is when he suggested it many times and made many threats toward us.

Q. He said that he had information that bore upon the matter?

A. We didn't know exactly what he was talking about. We thought he was talking about Camp Parks closing up, but evidently he was talking about the rent, as we found out shortly afterwards when he filed this complaint.

Mr. Dowling: If your Honor please, I do not like to make numerous objections in the course of interrogation of this sort. I would like to ask that

(Testimony of Oliver A. Fox.)

those last remarks go out as not responsive to any question.

The Court: They may go out.

Mr. Dowling: My principal objection is actually this [27] matter of threats is so vague I do not want to take the time of the Court in cross-examining him about it and bringing out the truth, that is all.

I have no further questions.

Redirect Examination

By Mr. Giometti:

Q. I just have one or two questions which were brought out by Mr. Dowling. You stated that the premises were not completed at the time the lease was entered into between you as a landlord and Mr. Doyle as a tenant, at that time, on December 31st, is that correct? A. That is correct.

Q. Did you have a conversation with Mr. Doyle about that time or that period about the completion of the premises?

A. You mean about when they were going to be completed?

Q. Yes.

A. Well, on finishing up a project, we did not know exactly when they would be completed, but we told them we would finish them up as soon as possible. We were completely through by February 15th, when we finished the place up and had everything hauled away and cleaned up.

(Testimony of Oliver A. Fox.)

Q. You told Mr. Doyle then, I take it, that you would not be finished in January, is that correct?

A. No, we didn't tell him we would not be finished in January. That was one of the main things on the first two months' rent, [28] because we didn't know exactly when we would have to be completed, but we told him we would finish it up just as soon as possible, and we would have it completed before March 1st.

Q. Did you have any conversation with Mr. Doyle as to why this lease should be entered into on December 31st?

Mr. Dowling: I am going to object to that as incompetent, irrelevant and immaterial. I can't see what the purpose of this line of inquiry is, your Honor.

Mr. Giometti: The point is simply this: In cross-examination Mr. Dowling raised the question and left the innuendo with the Court that these premises were leased and they were not completed, so the rent would be small, etc., and Mr. Doyle would be taking something not his full measure. I want to bring out and clarify the issue as to why these premises were rented at the time when they were not in a completed stage.

Mr. Dowling: As a matter of fact, if your Honor please, under the lease they had no obligation to complete the swimming pool until the first of June. There is no quarrel about that.

Mr. Giometti: No, I'm not talking about the

(Testimony of Oliver A. Fox.)

swimming pool. I am talking about the premises themselves.

The Witness: The main reason was because of tax purposes, that Mr. Doyle could take a loss on a certain piece of property with taxes. That was the same reason. And also he wanted the lease signed up so that he could get everything ready, register [29] with the OPA, and take care of everything before the place was actually finished so he would be free to operate when it was finished.

Mr. Giometti: I have no further questions.

Mr. Dowling: No further questions.

The Court: We might take the noon adjournment and resume at two o'clock. How many witnesses do you intend to call?

Mr. Giometti: I have two witnesses. I have Mr. Gabrielson, who can testify to many of the things that would be the same as Mr. Fox testified to. I would like to use him for just a couple of questions which are somewhat different, and then Mr. Rhodes, to verify a couple of factors. That is all. It will be very short, your Honor.

The Court: You will complete the case this afternoon?

Mr. Giometti: Yes, your Honor.

The Court: What was the first rental paid? $175?

Mr. Dowling: The first rental paid was February.

Mr. Giometti: So we will clarify that, supplying the formula called for in the lease, no money was

paid for the month of January, the gross receipts being less than $500. Applying the formula provided for in the lease, the sum of $175 was paid for the month of February, that being the first money actually paid, the gross receipts being approximately $675 less the $500.

The Court: We will resume at two o'clock. [30]

Afternoon Session, June 24, 1954—2:00 P.M.

CORWIN GABRIELSON

called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name, your address and your occupation to the Court.

A. My name is Corwin Gabrielson, 8415 Ney Avenue, Oakland. My occupation is title insurance.

Direct Examination

By Mr. Giometti:

Q. Mr. Gabrielson, you stated that your occupation was that of title insurance. Will you tell us what your occupation was at the time of the execution of the lease with Mr. Doyle?

A. I was in the title insurance business with the Oakland Title Insurance Company.

Q. That was your main occupation at that time?

A. Yes.

Q. Are you one of the owners of the motel at

(Testimony of Corwin Gabrielson.)

Pleasanton? A. Yes.

Q. Mr. Gabrielson, prior to the execution of the lease with Mr. Doyle, did you ever have any conversation with him relative to the subject of rent control on the motel?

A. Yes. In fact, I think that is one of the reasons that we [31] leased it to Mr. Doyle.

Q. Just a moment. You say you had such a conversation? A. Yes.

Q. Will you tell us where the conversation took place?

A. Well, at the motel itself, at the motel grounds, and also Mr. Doyle has a motel, Green Acre Motel on MacArthur Boulevard, in his offices.

Q. Are you saying that there was more than one of such conversations, then? A. Yes.

Q. And one of the conversations took place at the motel in Pleasanton?

A. It might have been one or two. There might have been more.

Q. The other took place at Mr. Doyle's motel at Green Acre, is that correct? A. Yes.

Q. Will you tell the Court who was present at the time of those conversations?

A. At one conversation at the motel I know I was present. I do not recall whether Patterson and Fox were, but at the Green Acre we all were present, Mr. Doyle, his wife, myself, Fox and Patterson.

Q. Will you tell us what the subject of that conversation was, Mr. Gabrielson?

A. It was more or less while we were negotiating

(Testimony of Corwin Gabrielson.)

the lease. [32] Mr. Doyle had convinced us that he was very experienced in motel operation and that he knew all the ins and outs of rent regulation, and so forth, which we knew little of. Therefore it would be to our advantage to lease it to him rather than look around any further.

Q. Did he tell you that he had operated motels in the past? A. Yes.

Q. Did he tell you how many motels he had operated in the past?

A. I believe he had had two under operation at that time and was going to try and accumulate a chain of motels.

Q. Mr. Gabrielson, did you at any time know that the Motel Pleasanton was subject to rent control?

A. Not at any time until after the action was filed.

Q. Did you ever have a conversation with a Mr. Bowser relative to rent control?

The Court: With whom?

Mr. Giometti: Mr. Bowser.

The Court: The lawyer?

Mr. Giometti: The attorney, yes.

The Witness: Will you repeat that?

Q. (By Mr. Giometti): Did you ever have a conversation with Mr. Bowser pertaining to the control of these premises? A. Yes, yes.

Q. Where did that conversation take place? [33]

A. In Mr. Bowser's office.

Q. When?

(Testimony of Corwin Gabrielson.)

A. Some time in December while we were negotiating the lease.

Q. Who was present at that time?

A. Mr. Bowser, Mr. Broun, myself, Patterson and Fox.

Q. Did you question Mr. Bowser at that time as to whether or not the premises were subject to rent control? A. Yes.

Q. Did he advise you on that subject?

A. Yes, he advised us it was not under control.

Q. Did you ever make any other inquiry as to whether or not these premises were subject to control, Mr. Gabrielson? A. Yes.

Q. With whom or of whom?

A. Nobody but an attorney.

Q. With what attorney, Mr. Gabrielson?

A. Just with Broun and Mr. Bowser, and I can't think — I also consulted another attorney in my office. See, we had quite a few attorneys coming into the office at the Oakland Title.

Q. Did you ever make any inquiry of the Office of Rent Stabilization as to whether or not these premises were subject to control?

A. I can't recall.

Q. Did you ever make any inquiry of a member of the Rent Advisory Board? [34]

A. Did I ever?

Q. Yes.

A. Oh, yes, but that was not maybe in June, not while the lease was being negotiated, but later.

Q. Let us take this June date. Of whom did you

(Testimony of Corwin Gabrielson.)

make the inquiry at that time as to whether these premises were subject to control?

A. Mr. Hyne.

Q. Where did that take place?

A. In Mr. Hyne's office.

Q. Where is Mr. Hyne's office?

A. In the Hayward area rent control office.

Q. Who was present at that time, Mr. Gabrielson? A. Mr. Fox, myself and Mr. Hyne.

Q. Were you advised at that time as to whether or not the premises were under control?

A. We were advised that they were quite sure they were not under regulation.

Q. At that time did you ask them, "Did you file a registration of those premises for the master lease"?

A. We were advised to. Just prior to that, if it is not getting off the subject, Mr. Doyle had gotten me aside three or four different times and told me that if I did not get the partners to reduce the rent, he knew something that I didn't know, and we would be awful sorry we didn't. Therefore when we [35] went in there, we asked him if we should not collect the rent for fear we would be in trouble if we did, and he advised us by all means to collect the rent, because they were quite sure we were not controlled.

Q. Who so advised you? A. Mr. Hyne.

Q. What was Mr. Hyne's function?

A. I think he was chief of that Rent Control Board in that area.

(Testimony of Corwin Gabrielson.)

Q. In addition to your conversation with Mr. Hyne did you make any inquiry of anyone else in an official capacity with the Office of Rent Stabilization as to whether or not this master lease was subject to rent control?

A. Yes. Then we came over, I think in July, to Mr. Goldbaum's office and sat in his office for an hour or so discussing it with him, and apparently it was in Washington then being decided, and he said he could not give us any answer until he got an answer himself from Washington.

Q. Who was present at that conversation?

A. I believe Mr. Fox, Mr. Patterson and myself were present. I know Mr. Patterson and myself were present.

Q. In addition to your conversations with Mr. Hyne and with Mr. Goldbaum, did you have any other conversation with anyone else in an official capacity as to whether or not these premises or the master lease were subject to control? [36]

A. Yes, I consulted with Gene Rhodes, an attorney in Castro Valley, and he had done legal work for me before, and he was on the Rent Control Board also, and I consulted with him and he looked up the minutes of the Board and advised me that he did not think they were under control.

Q. I show you this document. Will you tell us what that is?

A. I think that is the minutes of the Board. Yes, I know it is.

(Testimony of Corwin Gabrielson.)

Q. Those are the minutes of the Rent Advisory Board? A. Yes.

Q. As a result of your inquiry of Mr. Rhodes, did you receive that document from Mr. Rhodes?

A. Mr. Rhodes handed me a copy of this document. Whether this happens to be the same copy I do not know.

Q. The contents are the same as what he gave you? A. I am sure they are.

Q. And you received this from Mr. Rhodes in July as a result of your inquiry, is that correct?

A. Yes.

Mr. Giometti: I would like to offer this in evidence.

The Court: It may be marked.

Mr. Dowling: If your Honor please——

The Court: Mark it for identification temporarily.

(The document referred to above was thereupon marked Defendant's Exhibit C for [37] identification.)

Mr. Giometti: I have no further questions of this witness, your Honor.

Cross-Examination

By Mr. Dowling:

Q. Mr. Gabrielson, your first conversation with anybody about whether or not these premises were under rent control was with Mr. Bowser around the middle of December, was it?

(Testimony of Corwin Gabrielson.)

A. Yes, I believe that is correct.

Q. At that time you recall there was a conversation with Mr. Bowser, at which time he said that the individual rooms were subject to rent control but the master lease was not, is that correct?

A. That is correct.

Q. At or about the same time, although possibly not in the same conversation, Doyle told you that he operated other places, other motels, and he was familiar with the rent control regulations, that he knew what he should do to take care of registering those individual rooms, is that right?

A. I assumed that he meant all registrations which should be made in connection with a motel in a controlled area.

Q. He told you that he would take care of registering his units there, did he? A. Yes.

Q. He told you that he was familiar with those matters because he had other motel properties, is that correct? [38] A. Yes.

Q. And this was in the period of December, 1951, at the time you were negotiating the lease and prior to its execution, is that right?

A. Yes.

Q. Mr. Gabrielson, would your answer be any different if you knew that the order which placed this area under rent control was not promulgated until the 12th of January? A. No.

Q. It would not be any different? A. No.

Q. Your answer would not be any different if I were to tell you that these premises were not under

(Testimony of Corwin Gabrielson.)

control, neither the individual units nor the premises, in the middle of December, 1951?

A. No, because we never did know. Mr. Doyle had just explained he had motels, and so forth, which were under control, and so forth, and we hadn't the slightest idea. That is the reason, I think—that would be my reason for negotiating with Mr. Doyle, was because we figured he was an experienced operator. I almost convinced the other fellows through my suggestion that we lease it to Mr. Doyle.

Q. You were with the Oakland Title Insurance Company then? A. Yes.

Q. In what capacity? [39]

A. Escrow officer.

Q. How many years were you an escrow officer?

A. About seven years.

Q. Throughout that seven-year period you dealt as an escrow officer with many properties that were subject to rent control, didn't you?

A. I wouldn't know.

Q. You mean the subject of rent control never came up before you as an escrow officer in a title company? A. No.

Q. The matter of whether or not a property is subject to rent control?

A. No, we were not concerned with it.

Q. That was not a matter that concerned you as an escrow officer in the title company?

A. No.

Q. Over a period of seven years? A. No.

(Testimony of Corwin Gabrielson.)

Q. Mr. Gabrielson, would your answer with respect to these conversations in this matter be any different if you knew that Northern Alameda County, where the Green Acres Motel is that you were talking about, was not under rent control at that time? A. No.

Q. It still would not be any different. So you, Mr. Bowser, Mr. Doyle and Mr. Fox in December, 1951, were discussing at great [40] length whether or not these premises in Hayward were under rent control, when the order which placed them under rent control was not made until January 12th, 1952?

A. That is correct.

Mr. Giometti: The order was published in the Federal Register in December, 1951.

Mr. Dowling: No, it is in 17 Federal Register, page 403, under date of January 12th, 1952.

The Court: What is that reference?

Mr. Dowling: 17 Federal Register, page 403, Schedule A of the Rent Regulation, was amended to include the Southern Alameda County Defense Rental Area on that date, January 12th, 1952, setting a maximum rent date of November 1st and an effective date of January 14th. That is subject to counsel checking it, your Honor. I am reasonably satisfied that that is correct.

Q. It was not—not until some time late in May or early in June that you first talked to Mr. Hyne about it, is that correct? A. That is correct.

Q. Meanwhile you had not talked to anybody

(Testimony of Corwin Gabrielson.)

about whether this master lease was subject to control, is that correct?

A. Nobody in a legal capacity.

Q. Nobody in a legal capacity; you had not sought any legal advice from your own counsel?

A. Oh, yes, we had talked to Bowser in the meantime.

Q. You had talked to Bowser meanwhile? [41]

A. In the meantime.

Q. Between January 1, 1952, and June?

A. Yes. See, I had conversations with Mr. Doyle maybe every week or two about reducing this rent or should do something, and then I would naturally be concerned and ask Mr. Bowser whether he thought in connection with that—he was quite sure they were not under control.

Q. It was not until July that you talked to Mr. Goldbaum in his offices in San Francisco?

A. That is right.

Q. Your recollection is that Mr. Goldbaum told you in July that this matter was pending in Washington at that time? A. Yes.

Q. And that he did not know whether it was under control or not? A. That is right.

Q. Would your answer to that question be any different, Mr. Gabrielson, if you knew that this file which has been introduced as Defendant's Exhibit A contained a copy of a letter from Mr. Goldbaum addressed to the law offices of Malone and Sullivan, carbon copy to the Area Rent Director at Hayward, California, under date of May 22nd, 1952, in which

(Testimony of Corwin Gabrielson.)

Mr. Goldbaum says, among other things, that the property is subject to control?

A. I do not think there would be any difference in this [42] respect. I think it was up for decontrol at the time, if I remember right. Therefore I don't know; if the decontrol came through, it wouldn't have been under control.

Q. So then by the time that you talked to him in July it had been ascertained that it was not under control and you were talking about decontrol, is that right? A. That is, if I recall, right, yes.

Q. So that by the time we get up to July, you knew it was under control and what you were attempting to do was getting it decontrolled?

A. No, I never knew it was under control until after the suit was actually filed. In my own mind I did not know it was under control. Nobody told me it was under control. My thought was that they were waiting for the opinion to find out whether it was under control or not.

Q. Mr. Gabrielson, let me direct your attention to Defendant's Exhibit C for identification, marked "Minutes of Rent Advisory Board Meeting, Southern Alameda County Defense Rental Area, July 15th, 1952." Do you recall that in there they are talking about decontrolling the property?

A. Yes.

Q. By the time you got hold of a copy of this you certainly knew they were talking about decontrol, didn't you?

A. I can see your point now, but at the time,

(Testimony of Corwin Gabrielson.)

no, I didn't think of it that way. I figured if they assumed it was not [43] under decontrol, it would be decontrolled as of the date of the regulation.

Q. As a matter of fact, all of your conversations with Mr. Hyne were along the lines of trying to get him to decontrol these premises, weren't they?

A. No. Mr. Hyne—our conversations with him were, would he collect the rent? "By all means. I don't think you come under this regulation." That is what we were going by.

Q. What is the latest date upon which Mr. Hyne was advising you, according to your best recollection? A. I think it was sometime in June.

Q. Sometime in June?

A. I don't think I saw him later than that.

Q. Let me ask you this: Did Mr. Goldbaum give you the same advice when you talked to him in July? A. As far as I interpret it, yes.

Q. Did he tell you to keep on collecting the rent?

A. No, we didn't even ask him. We were just concerned with whether this was controlled or was not controlled. From his conversation I gathered it was not under control.

Q. Did Mr. Goldbaum tell you it was not under control?

A. I wouldn't say that. I said I interpreted it. That was his opinion, that until he heard from Washington one way or the other, he couldn't tell. That shows I didn't know it was under the regulation. None of us did or we wouldn't have been in Mr. [44] Goldbaum's office. We would just have known it was under control.

(Testimony of Corwin Gabrielson.)

Q. You are talking about until after he heard from Washington? A. Yes.

Q. This is as of the time in July, you said?

A. Yes.

Q. Would your answer be any different if you knew that he had heard from Washington and had written a letter on May 22nd stating that these premises were under control?

A. According to our conversation in his office he had not determined—I don't know what answer he got from Washington, but he had not determined yet whether we came under control.

The Court: Who had not determined?

A. Mr. Goldbaum.

Q. (By Mr. Dowling): Mr. Hyne, you say, sometime in June told you to keep on collecting the rent? A. Yes.

Q. As a matter of fact, you not only collected it but you made demands for it, isn't that correct?

A. That is correct.

Q. In the months of July, August and September you served on Doyle three-day notices to pay up or quit, is that right? A. That is right.

Q. In connection with each of those notices you demanded the sum of $2000 or the gross less $500, whichever was higher? [45] A. Correct.

Q. At the time you made those demands you knew that Doyle contended the premises were under control, didn't you? A. No.

The Court: What was the first date when the

(Testimony of Corwin Gabrielson.)

contention was made by Mr. Doyle that the premises were under control, according to your recollection?

A. I can't ever recall.

The Court: There must have been correspondence on the subject.

Q. (By Mr. Dowling): You can't ever recall that he made such a contention?

A. Not to me personally and, of course, my working for the title company. Mr. Patterson was keeping most of the records and correspondence.

Mr. Dowling: Mr. Giometti, do you have in your files the original of the letter dated early in August from Mr. Doyle to Mr. Fox, Mr. Patterson and Mr. Gabrielson enclosing $152 as rent for the month?

Mr. Giometti: I think so. I have no objection to your using the copy.

The Court: With that understanding the copy may be used.

Mr. Dowling: Thank you. May it be marked in evidence at this time?

The Court: Very well. [46]

(Whereupon the letter referred to above was received in evidence and marked Plaintiff's Exhibit No. 4.)

Q. (By Mr. Dowling): After receipt of that $152 you served a notice to pay rent or quit on Mr. Doyle, didn't you?

A. I know we served a notice for the last two or three months.

(Testimony of Corwin Gabrielson.)

Mr. Dowling: The notice to pay rent, if your Honor please, I ask to be marked Plaintiff's exhibit next in order. It purports to bear the signature of Mr. Gabrielson.

The Court: What is the date?

Mr. Dowling: August 5th, 1952.

The Court: It may be marked. So ordered.

(Whereupon the notice to pay rent referred to above was received in evidence and maked Plaintiff's Exhibit No. 5.)

Q. (By Mr. Dowling): That is your signature, I take it, Mr. Gabrielson? A. Yes.

Q. Do you remember receiving a letter from Mr. Doyle under date of August 11th, 1952, tendering the balance of $200 less the $152 he had already paid?

The Court: Pardon me just a moment. May I follow the figures? Tendering the balance of $200?

Mr. Dowling: Less the $152 that had already been paid.

The Witness: I don't recall it, no. You see, Patterson [47] kept all of the books and most of the correspondence. Therefore I was not cognizant of all the correspondence that took place.

Q. When you signed this three-day notice to pay up or quit, did you know that Doyle had already paid $152?

A. No, I would have made it up in the office because the facilities were there to send it out.

Q. You would have made it up without any

(Testimony of Corwin Gabrielson.)

knowledge at all as to whether Doyle had paid rent or not?

A. No, Patterson or Fox would have come in and said, "Let us make a three-day notice. We haven't got our rent." I would have made it.

Q. If Doyle had paid $152 of rent I suppose they would have told you?

A. Yes, I suppose they would have.

Q. Do you recall that they told you?

A. No, I do not.

Q. Do you think you would remember ordinarily if somebody told you that Doyle was only going to pay $152 a month rent now?

A. No, it would depend upon the circumstance whether I would or not.

Q. That is something you might not remember?

A. Yes. They may have told me while I was waiting on customers at the counter or something like that, and I may not have paid any [48] attention.

Mr. Dowling: There is a series of these. We might mark them as one exhibit if counsel has no objection.

The Court: Mark them as one exhibit.

Mr. Giometti: I have no objection.

(Whereupon the notices referred to above were received in evidence and marked Plaintiff's Exhibit No. 6.)

Q. (By Mr. Dowling): You were interested enough in this problem, though, to make some casual

(Testimony of Corwin Gabrielson.)

inquiries of attorneys who might drop in to the title insurance company?

A. Yes, every time that I would get a threat from Mr. Doyle I would wonder what is behind this and why does he make threats to us.

Q. When you found out that he contended the place was subject to rent control, you made some inquiries, is that right?

A. No, he didn't tell us it was subject to rent control.

Q. He never did?

A. He may have, but not until at least May or June, I know.

Q. Not until May or June?

A. Not until the time we went down to the Area Board and tried to find out.

Q. This rent registration statement that you filed was filed at a time when you felt the premises were not subject to control, is that right?

A. No, it was filed at a time when we were advised by the [49] Area Board that we should file it, because they didn't think it was under control. But I guess they were not positive themselves, so we figured, after all, if they are the control board, and so forth, if they advise us to do it, we had better do it.

Q. Did they advise you at some time it was not subject to control?

A. No, they said they did not think it was under control.

Q. Despite the fact that they did not think it

(Testimony of Corwin Gabrielson.)

was controlled, they advised you to file a registration statement? A. I guess as a precaution.

Mr. Dowling: I have no further questions.

Mr. Giometti: Just a few more questions of this witness, your Honor.

Redirect Examination

By Mr. Giometti:

Q. Mr. Gabrielson, this motel is located in Pleasanton, is that correct?

A. Near the town of Pleasanton, Pleasanton Township.

Q. As a matter of fact, there is a military base in that vicinity, is that correct?

A. That is correct.

Q. What is the name of that base?

A. Camp Parks Air Force Base.

Q. When was that base placed out there, Mr. Gabrielson?

The Court: Is it near Livermore?

Mr. Giometti: Yes, your Honor. [50]

The Court: That is an old training base. I remember it.

The Witness: I don't know. It was being built at the time we built the motel, and I think that is the reason we built the motel. I don't know when it came into operation, around February sometime, I believe, that it was formally opened.

Q. (By Mr. Giometti): That was 1951?

A. 1952, I believe.

(Testimony of Corwin Gabrielson.)

Q. 1952. I am sorry. It was being reactivated out there at the same time you were building your motel, is that correct? A. Yes.

Q. As a result of that, there were articles in the newspapers about that time pertaining to the building of that base, is that correct? A. Yes.

Q. Were here articles in the newspapers in the month of January, 1952, or December of 1952 dealing with the possibility and the probability of the reinstallation of rent control because of the establishment of that base?

A. I wouldn't doubt it because there was a lot of conversation about rent control, and I know we discussed it, both in Mr. Bowser's office and in Mr. Doyle's office.

Q. Mr. Gabrielson, do you know the difference between the terms "rent control" and "maximum rent"?

A. I don't know whether I do or not. [51]

The Court: We might define them. If he does not know, let us pass it. Is there any reason why he should know?

Mr. Giometti: I think it is in answer to these inferences that have been raised on cross-examination, your Honor. In other words, the maximum rent was never set, though it was stated that they were under control, and, of course, that could confuse an individual. That is the reason why I am asking the question.

The Court: Whether you are confused or not, what relevancy has that? If in fact there is an

(Testimony of Corwin Gabrielson.)

establishment of rent control, and if a maximum rental is described, what does it matter what may go through a man's mind, whether confusion is generated or not? The condition is created and there is the condition.

Mr. Giometti: I agree with that, of course, except that the point I had in mind is this——

The Court: However ironic it may be in many cases.

Mr. Giometti: Right.

Q. As to these premises, was a maximum rent ever established?

Mr. Dowling: I am going to object to that as a legal opinion and conclusion unless it is directed to the question whether an order was ever made.

The Court: I think so.

Mr. Dowling: If that is what counsel means to ask, I have no objection.

Mr. Giometti: Let us modify the question. [52]

Q. Was an order ever made establishing a maximum rent control on your premises at the motel for the master lease at Pleasanton?

A. Not that I ever knew of, and we never could find out from the rent control that there was a maximum.

Q. Did you request that a maximum rent be established? A. Yes, we did.

The Court: At any time was a maximum rent established?

A. I don't think up to this date one has been set, an order has been rendered.

(Testimony of Corwin Gabrielson.)

Mr. Giometti: I am referring to Plaintiff's Exhibit No. 6. There appears an address to which that letter was addressed. That is Mr. Patterson's address.

The Court: Did the Board ever make reference, or did any individual member of the Board ever make reference to the provision under which Mr. Dowling predicates his cause?

Mr. Giometti: No, the Board was specifically requested to set the maximum rent by comparable housing. The Rent Advisory Board said there was no comparable housing. We can't do it, and so they decontrolled it. Rent control went off and the matter died. I am now referring to Plaintiff's Exhibit No. 4, which is a letter.

Q. Whose address is that?

A. That is Mr. Patterson's.

Mr. Giometti: I have no further questions, your Honor.

Mr. Dowling: No further questions. [53]

GENE RHODES

called as a witness on behalf of the defendants, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name, your address and your occupation to the Court.

A. Gene Rhodes, 201 Walsh Building, Hayward, California. Attorney.

(Testimony of Gene Rhodes.)

Direct Examination

By Mr. Giometti:

Q. Mr. Rhodes, directing your attention to the year of 1952, what was your occupation at that time?

A. I was an attorney-at-law at that time, licensed in the state.

Q. Did you have during that period of time any connection with rent stabilization?

A. I was for the entire period of the effective dates of rent stabilization a member of the Rent Advisory Board of the Defense Rental Area of Southern Alameda County.

Q. How many members were there on the Board? A. Five.

Q. As a member of that Board, did you receive any inquiry from the owners of the Pleasanton Motel as to whether or not the master lease there was subject to rent control?

A. I received one inquiry around the last of May or the first of June—I am speaking just from memory—from Mr. [54] Gabrielson inquiring as to whether or not such a lease would be under control. I did not examine the lease in point in this case.

Q. Did you advise him at that time as to what the Board's position was?

A. I advised him at that time that I had heard some conversation about it from Mr. Hyne, who was the director of the Southern Alameda County Area, and that the matter was being studied and consid-

(Testimony of Gene Rhodes.)

ered, and that it was my personal opinion, although the Board had not formed an official opinion, that such a lease would not be subject to rent control under 39(c) or any other regulation.

Q. I show you Defendant's Exhibit C, which are the minutes of the Board meeting of the Board of which you are a member, is that correct?

A. Yes, I would say this is a copy of the minutes of the meeting as of July 15, 1952.

Q. Did you ever give a copy of those minutes to any of the owners of the motel?

A. I gave a copy to Mr. Gabrielson, and I later gave one to Mr. Gabrielson's attorney, Mr. Bowser.

The Court: This was written in your official capacity?

A. They were under the direction of each member of the Board by the Secretary of the Board.

Mr. Giometti: At this time I would like to ask that this [55] go into evidence, if the Court please.

Mr. Dowling: I would like to object unless the admission is for the limited purpose of establishing generally what went on at the Area Rent Board by way of establishing what might be done generally the good faith of the defendants. In other words, I do not think it has any materiality or bearing upon what is the maximum rent, if there is one.

The Court: The facts, I take it, were in keeping with the facts that you were confronted with?

A. Those are the facts, yes.

Q. Recommendation under 39(c). That is the section to which you made reference?

(Testimony of Gene Rhodes.)

A. Yes.

Q. And you considered at that time the 25-room base?

A. Yes, we did, your Honor. In considering the number of units, I think the Board uses a pattern of the number of sleeping rooms, and there were, I believe, over 25 sleeping rooms and some of these units were double-bedroom units.

The Court: I will admit it.

This was directed then to your clients, was it?

Mr. Giometti: That is correct. That was given to my clients.

The Court: Who presented it? Mr. Bowser?

Mr. Giometti: Mr. Rhodes delivered, as former evidence shows, this document to Mr. [56] Gabrielson.

The Court: All right.

(Whereupon Defendant's Exhibit C for identification was received in evidence.)

Q. (By Mr. Giometti): In your capacity on the Rent Advisory Board were you ever requested to compute a maximum rent for the motel in Pleasanton?

Mr. Dowling: I will object to that as incompetent, irrelevant and immaterial. I think it is conceded, if your Honor please, that no order was ever made by the Area Rent Director fixing rent for these premises pursuant to section 166, that they were not decontrolled as recommended in these

(Testimony of Gene Rhodes.)

minutes, and what preliminary steps might have been taken in connection with this, in connection with either of those ends, is completely immaterial.

Mr. Giometti: I will say this, your Honor: The position of the Rent Stabilization Board or the Office of Rent Stabilization was that these premises were subject to control. However, there is no maximum rent. The maximum rent is to be established by determining what the rent is for a comparable area or a comparable unit. If there was an attempt made to establish such a thing on the part of my clients, I think that that is pertinent at this time.

The Court: I will allow it.

A. I am unable to say as to whether or not we received a request from either of the litigants here, if that is what you [57] mean. We received a request from Mr. Hyne which was in the form of pleadings, that he had received a letter or a communication of some sort saying that Section 39(c) did apply to situations such as the one that was before the Board, and that we would therefore have to take some kind of action on 39(c). He suggested or he proposed to the Board three different alternatives, and the Board adopted one of those alternatives, which was a resolution as set forth in those minutes recommending that 39(c) be held by the National Director not to apply to Southern Alameda County because it was completely inapplicable to the situation, there being only one such motel in all of Southern Alameda County, and

(Testimony of Gene Rhodes.)

no practical means by which the Board felt that they could fix a maximum rent.

Q. In your conversation with Mr.——

A. I had better say just one thing. When I said only one motel in Southern Alameda County, I am thinking of the geographical location. There are other motels in what are known as East Oakland or near San Leandro, but over the City of Hayward on the county line there is no other motel that even remotely compares with the El Rancho.

Q. I do not recall if this question has been asked you, but did you at any time in your capacity as either an attorney or as a member of the Rent Control, Rent Advisory Board, advise any of the owners of the motel that the premises were or were not subject to control? [58]

A. Only by giving an opinion and by furnishing copies of the minutes. I did advise them before the matter ever came before the Board that it was my personal opinion that the regulations were not applicable to this situation, and I advised them after the Board—by "them" I mean only Mr. Gabrielson—I advised Mr. Gabrielson after the Board had the matter officially called to its attention that the Board still felt that 39(c) could not be applied to this situation, and I gave them my reasons for that.

Mr. Giometti: Thank you. I have no further questions of this witness.

(Testimony of Gene Rhodes.)

Cross-Examination

By Mr. Dowling:

Q. Mr. Rhodes, there were only these two occasions on which you advised and consulted with Mr. Gabrielson with reference to the applicability of the rent regulations to the underlying lease, is that correct?

A. To the best of my recollection, Mr. Dowling, that is correct: once before the matter was taken up by the Board at any meeting, and after the matter had been acted on in July.

Q. The first time was some time in May or June?

A. That is the best of my recollection, yes.

Q. Having in mind, Mr. Rhodes, that on May 22nd Mr. Goldbaum wrote a letter, carbon copy of which went to the Area Rent Director in Hayward, in accordance with which Mr. Goldbaum said that 39(c) was applicable, having in mind that that letter [59] bears date of May 22nd, would you say you spoke to Mr. Gabrielson some time prior to May 22nd?

A. I certainly would not be evasive to your question, but I just don't remember that. And I don't remember whether I spoke to him before that answer was received or after it was received. I can remember this, that the receipt of Mr. Goldbaum's letter did not change our opinion in this respect. We realized that 39(c) was on the books but we felt that the situation was incongruous with the spirit of that rent control law, which we tried

(Testimony of Gene Rhodes.)

to administer, and we still felt that that 39(c) should not apply to this, even though we received official directives that it technically did apply.

Q. In other words, by that time you were intellectually convinced but not emotionally convinced?

A. Not exactly. You see, although we received Mr. Goldbaum's letters, we received constant directives from Mr. Tighe Woods and his successor, who were the national directors, reminding us over and over what the spirit of these regulations was to be, how the local boards should interpret them, and we were very honestly looking for a way whereby we would not have to set a maximum rent in this particular case.

Q. Mr. Goldbaum, of course, was the Regional attorney at that time, wasn't he?

A. As far as I know, yes.

Q. When you gave this first opinion prior to the meeting of [60] the board some time in May or June you did not even examine the lease, is that correct?

A. I did not. They proposed a situation to me and recited it in narrative form. I did not examine the lease.

Q. That was done with you informally, I take it? A. Very informally, yes.

Q. It was not done at any regular meeting of the Advisory Board?

A. Oh, no, sir. Mr. Gabrielson called to my of-

(Testimony of Gene Rhodes.)

fice about it. Actually it was a telephone conversation between Mr. Gabrielson and myself.

Q. Did he know at that time you were a member of the Rent Advisory Board?

A. I don't know whether he did or not when he called me. He did before the conversation was finished, because I told him it was a matter of particular interest to me.

Q. Had you known Mr. Gabrielson before that time?

A. Yes, I had known him for several years. I have also, for your information, to be fair with you, represented Mr. Gabrielson on other legal matters.

Q. Were you representing him in legal matters at the time that you were giving him this advice?

A. Well, perhaps you understand the situation as well as anybody. Somebody who had sought your advice on a matter before might call you on a phone, propose a suggestion to you, [61] and say, "What do you think about it?" and you say, "Well, I believe this would be my opinion."

Q. Let me be much more specific. You were not representing him in connection with any matters pertaining to this El Rancho Santa Rita Motel?

A. Oh, of course not, no.

Q. What I am trying to get around to, did he approach you in your capacity as an attorney to engage your professional opinion as his counsel, or did he approach you as a member of the local Rent Advisory Board to get your opinion?

(Testimony of Gene Rhodes.)

A. It would be awfully hard for me to say because he merely called me and presented the question to me without mentioning whether or not I was a member of the Board or mentioning anything else other than, as I remember it, just launching into the conversation as to what I thought about the situation.

Q. The second occasion you talked to him was after the meeting of July 15th? A. Yes, sir.

Q. Did you tell him at that time that there was some recommendation that the property be decontrolled?

A. I actually read to him the minutes or at least notes from the minutes and told him that I would give him a copy of them.

Q. And those minutes have to do with the matter of decontrol, do they not?

A. I suppose that is a matter of legal interpretation of that [62] term. Rather than decontrol, we felt that we were resolving that the section should be held not applicable to this case or to Southern Alameda County.

Q. What you proposed to do was to have the regulations amended so that it would not apply, isn't that correct?

A. We sought to secure a ruling saying that in a case where any underlying lease was executed, to give this two and a half month period, which caught this particular lease, and where there were no comparable units for comparison, that the regulation should not apply.

(Testimony of Gene Rhodes.)

Q. And that would have to be by amendment to the regulation, wouldn't it?

A. I would answer you if I could. I do not really know.

Q. Let me ask you this: Wasn't the purport of the action of the Rent Advisory Board to memorialize the National Rent Director to request him or to recommend to him that he so amend the regulations that they would be no longer applicable to this situation that you had in Pleasanton?

A. The purpose was to secure a ruling by him to that effect. Whether or not it would have been necessary to amend or not, I can't say.

Q. In any event, no such amendment was made and no such ruling was ever received?

A. That is correct, and the Board took no further action at all. You might say the matter reached a stalemate. [63]

Mr. Dowling: I have no further questions.

Mr. Giometti: I have just a couple of questions.

Redirect Examination

By Mr. Giometti:

Q. Have you ever seen that document before?

A. I believe I have, Mr. Giometti. We certainly attempted to examine every piece of information that we received on anything relative to this particular problem as well as to others, and I believe that I have seen this and I do recognize, of course, our office stamp showing that it was received in our office.

(Testimony of Gene Rhodes.)

Q. Will you tell the Court what that document represents?

A. Occasionally, with regularity—in fact, every month, if I remember—we received a letter from the General Counsel of the Office of Rent Stabilization making certain interpretations and suggestions to the Advisory Board. This represents the letter, according to its heading, for May, 1952, and contains at least one page dwelling on Section 39 of Rent Regulation No. 1.

Q. And specifically pertaining to the problem of this particular motel, is that correct?

A. Yes, it does.

Q. After this directive or this copy was received, you received a directive from the Area Office of the Rent Stabilization body, did you not, to establish a maximum rent?

A. I believe we received something of that nature, and in the group of documents Mr. Dowling is handling I believe there is [64] something of that nature, but I would have to look at it to refresh my recollection to say that that is the type of thing it was.

Q. Which document were you referring to?

A. Those which are bound with your red—yes, that group.

Q. Is this the document to which you refer?

A. Yes, sir, this document, which is the memorandum to F. C. Hyne, Area Rent Director, from William Goldbaum. Subject, El Rancho Santa Rita Motel Registration. Yes, sir, this was received in

(Testimony of Gene Rhodes.)

our office on the date it bears on its face on the stamp, June 11th, 1952.

Q. And you were requested at that time to establish a maximum rent under the provisions of Section 166 of Rent Regulation 1, is that correct?

A. We were asked to establish a maximum rent, and I am now trying to determine whether or not it was under 166. I take it that it was. Certainly we were asked to attempt to establish the maximum rent.

Q. Did you make an attempt to establish a maximum rent?

A. We asked our director, Mr. Hyne, and his assistant, Mr. Briggs, to make a study to determine whether or not it was possible in this case to establish a maximum rent using the same principles that were used in all other cases of establishing rents, and their report to us was that it was an impossible situation because of the uniqueness of the location and size [65] and the other factors of the motel.

Q. It was at that time then that the Rent Board ruled your request that Section 39(c) not be applicable to this particular area, is that correct?

A. That is correct.

The Court. What happened to the request?

A. The request was forwarded on to Washington. If you will excuse me just a minute to get my briefcase, I may have a note on what followed. I have here in my hand a copy of the minutes dated September 15th. I beg your pardon, it is September 9th, 1952, which I will read this brief sec-

(Testimony of Gene Rhodes.)

tion from, if that is what you would like, Judge. It says the Director presented a letter from Mr. Tighe Woods in reply to the resolution adopted by the Board, whereby they recommended that Section 39(c) of the regulations be rendered or be made inapplicable to the Southern Alameda County Defense Rental Area due to the fact that such underlying leases as prescribed in the regulations are not a part of the normal housing market in this area.

Specifically, this section applied to the El Rancho Santa Rita Motel in Pleasanton. The letter states that the resolution was given thorough consideration by the National Director but it had been rejected due to the fact that 39(c) has always been a part of the regulation and it could not be made inapplicable to one area.

A motion was then made, seconded and carried that when it [66] becomes necessary for the Rent Office to set the rents on the units involved, the Director be authorized to contact the motel Board of this area after recommendation as to the amount of rent they deem proper for the Rent Advisory Board and the Rent Office. Also said rent should be established on a prospective basis. A tenant's lease contains the right to cancel or terminate on and after October 1st, 1952, and it would therefore, that the exemption from the regulation would become applicable at that time.

That is the extent of the notation on that subject.

Mr. Giometti: I have no further questions, your Honor.

(Testimony of Gene Rhodes.)

Recross-Examination

By Mr. Dowling:

Q. The net effect of what you have been reading, Mr. Rhodes, as I gather it, is that the recommendation made by the local Advisory Board was rejected by the National Rent Director?

A. Yes, sir, that is correct.

Q. And that upon the grounds that 39(c) had always been a part of the regulations?

A. Yes, sir.

Mr. Dowling: I have no further questions.

Mr. Giometti: I believe Defendant's Exhibit C is for identification, is that correct?

Mr. Dowling: It has been admitted, I [67] think.

Mr. Giometti: At this time, if your Honor please, I should like to offer in evidence this memorandum from the Office of Rent Stabilization.

The Court: It may be marked. Do you have any objection to that?

Mr. Dowling: Only this: Again I have no objection to it for the limited purpose of such bearing it might have had on the state of mind of the defendants. I do not think it has any materiality as far as its legal opinion as to what the maximum rent is.

The Court: For that purpose it may be admitted.

(Whereupon the memorandum referred to

above was received in evidence and marked Defendant's Exhibit D.)

Mr. Giometti: The defendants rest, your Honor.

(Recess.)

Mr. Dowling: If your Honor please, I do not think the plaintiff will put on any testimony in rebuttal. Might I suggest to your Honor that memoranda be directed to your Honor in ten days?

The Court: Yes, I would suggest a memorandum of ten or fifteen days. Any time you agree on is agreeable.

Mr. Giometti: All right. Just so I understand the time element, your Honor.

The Court: What is the total amount prayed for in this case? What is the basis of the computation so that I will have [68] it in mind?

Mr. Dowling: I will set that forth in this memorandum. In the complaint as it was drawn it is presently framed on the basis of a ceiling rent of $152. The prayer is for $7,825 single damages in the original complaint and for an additional $3,841 by supplemental complaint.

The Court: How long was your client in possession?

Mr. Dowling: He was in possession from January 1, 1952. Actual operations did not commence until about the middle of that month. He continued until the first of October, 1952, a period of nine months. There is the alternative theory suggested to your Honor this morning might prevail as a

matter of law, that the ceiling is not the dollars and cents ceiling but the formula established, namely, gross less $500.

The Court: The first month was $652 less $500, which is $152. That is the basis?

Mr. Dowling: That is the basis.

The Court: That is your contention?

Mr. Giometti: Are we speaking of the formula computation?

The Court: Formula.

Mr. Giometti: On the formula computation there was nothing paid on the first month.

The Court: That is right. January, nothing paid; February, $152.

Mr. Giometti: Actually that was for rent. [69]

Mr. Dowling: Actually there was $175 that was paid.

The Court: That would be a rather modest rental for 26 units.

Mr. Giometti: I think it would be.

The Court: I would like to rent a place like that.

Mr. Giometti: With a swimming pool, your Honor.

Mr. Dowling: Of course, we only had the swimming pool from July. If the formula applies on the other hand, if your Honor please, as I suggested to you, and as I recall, your Honor gave me leave to file an amendment to conform to proof in that respect, the single overcharges would be in the neighborhood of twenty-eight or twenty-nine

hundred dollars, and they would be within the months of March, April and May, and the date upon which those would be supported——

The Court: I will get your arithmetic from your memoranda. There is no claim for treble damages, is there?

Mr. Dowling: Oh, yes.

The Court: Upon what basis?

Mr. Dowling: Upon the basis that there is no showing that the overcharges were either willful or that the defendant took all reasonable and factual precautions. I think the testimony is clear from the testimony of both Mr. Fox and Mr. Gabrielson that, taking their testimony at its face value, they made some inquiries in this matter and got what was admittedly the correct answer at that time, that nothing was [70] under control, which it was not, the master lease, the subleases, or anything else; and subsequently they made no attempt to inquire into the matter until some time in June or May.

The Court: The lawyer from Hayward testified to that on the stand.

Mr. Dowling: In May, some five months later. In the intervening period between January and May they did not even make an attempt to find out.

The Court: Wouldn't it be indicated that a person might be well lulled into a state of quiescence during that period under the facts and circumstances surrounding this transaction?

Mr. Dowling: Only to the extent that it was

not a transaction subject to control at the time it was entered into.

The Court: They talked to a lawyer, who is a man of some ability in Oakland, Bowser.

Mr. Dowling: There is no question about his ability.

The Court: What is your view on this matter, counsel?

Mr. Giometti: As to the treble damages, your Honor?

The Court: Yes.

Mr. Giometti: I think these people took every possible precaution. First of all, in this matter they raised the question with their attorney. They were also advised by Mr. Doyle, the operator, that he was familiar with all of these things, and the question came up, and the only thing they thought was under control were the individual rooms. [71] Later, after they had been advised that the premises were not subject to control, after they had been threatened, and after an increase had been started, they consulted, actually consulted, your Honor, with the Area Rent Board. The Area Rent Board tells them, "This place is not under control, but go ahead and file your registration certificate anyway." That is the Director.

So they file the registration certificate. They attach a copy of the lease, and they do that in good faith. What happens with the mixup in between the Area Rent Office? As a matter of fact, the fault

here lay with the government agency rather than with any individuals, because the government agencies kicked this thing around and they kept kicking it around, and they kicked it around until the entire matter died. What happened? The form is filed. When they finally determined that the place is subject to control under 39(c), the Rent Director turns around and he says, "All right, go back then and advise me what the maximum rent is going to be."

The Advisory Board says, "We can't advise you what the maximum rent is going to be because there is nothing like this, so we suggest that this place be decontrolled. We can't establish a maximum rent."

The Court: Nothing was ever done.

Mr. Giometti: Nothing was ever done. It was just kicked around back and forth. When they came over here, they say, [72] "Send this matter back to Washington."

The Court: Mr. Dowling sits by the side of the road and says, "Nothing has been done." What is your answer to the legal proposition?

(Thereupon counsel for the respective parties and the Court entered into a discussion of the legal principles involved, which was reported but not transcribed, at the conclusion of which the matter was submitted on briefs.)

Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 72 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ J. F. SWEENEY.

[Endorsed]: Filed December 15, 1954. [72-A]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Complaint.

Stipulation and order permitting the filing of supplemental complaint.

Supplemental complaint.

Answer to complaint and supplemental complaint.

Request for admissions under Rule 36.

Answer to request for admissions.

Amendment to complaint to conform to evidence pursuant to Rule 15 (b).

Memorandum opinion and order.

Plaintiff's proposed amendments to defendants' proposed findings of fact and conclusions of law.

Findings of fact and conclusions of law.

Judgment.

Notice of appeal.

Cost bond on appeal.

Designation of contents of record on appeal.

Reporter's transcript of June 24, 1954.

Plaintiff's Exhibits Nos. 1 through 6, inclusive.

Defendants' Exhibits A through D, inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 16th day of December, 1954.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ WM. C. ROBB,
Deputy Clerk.

[Endorsed]: No. 14601. United States Court of Appeals for the Ninth Circuit. James B. Doyle, Appellant, vs. Oliver A. Fox, J. E. Patterson and Corey Gabrielson, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 16, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals in and for the Ninth Circuit

No. 14601

JAMES B. DOYLE,

Appellant,

vs.

OLIVER A. FOX, J. E. PATTERSON and COREY GABRIELSON,

Appellees.

STATEMENT OF POINTS ON APPEAL AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF

(Rule 17(6))

The appellant herein presents herewith his statement of the points on which he intends to rely on appeal, and designates the parts of the record which he thinks necessary for the consideration thereof.

Statement of Points on Appeal

1. The trial court erred in failing to find as follows:

"On December 31, 1951, the defendants, as lessors, entered into a written lease with the plaintiff, as lessee, under the terms and provisions of which the plaintiff leased from the defendants the said premises commonly known and designated as the El Rancho Santa Rita Motel for a term of three years to commence January 1, 1952. The said prem-

ises which were the subject of said lease were not rented at any time prior to December 31, 1951. Said premises were housing accommodations."

2. The trial court erred in failing to find that the appellant remained in possession of said premises as the tenant of appellees continuously from January 14, 1952, to and until September 30, 1952.

3. The trial court erred in failing to find as follows:

"Under the terms of the said lease executed by and between the defendants and the plaintiff, the plaintiff agreed to pay as rental for each of the first two months of the term—namely, for the months of January and February, 1952—the gross receipts from the plaintiff's operation of the said premises as a motel or motor court less the sum of Five Hundred and no/100 ($500.00) Dollars each month. Under the terms of said lease, the plaintiff agreed to pay as rental for each of the months of March through September, 1952, his gross receipts as aforesaid less the sum of Five Hundred and no/100 ($500.00) Dollars each month or the sum of Two Thousand and no/100 ($2,000.00) Dollars, whichever was the greater amount. The plaintiff operated said premises as a motel or motor court from January 14, 1952, until September 30, 1952. In the month of January, 1952, the gross receipts from the operation of the said premises by the plaintiff were less than Five Hundred and no/100 ($500.00) Dollars and no rent was paid for that month. In the month of February, 1952, the gross receipts from the operation of said premises

by the plaintiff were Six Hundred Fifty-Six and no/100 ($656.00) Dollars and for the month of February, 1952, the plaintiff paid to the defendants the sum of One Hundred Seventy-Five and no/100 ($175.00) Dollars as and for rent for said premises, there being a small overpayment of the rent payable under the lease arising out of mathematical mistake or miscalculation."

4. The trial court erred in failing to find as follows:

"At no time prior to October 1, 1952, did the Director of Rent Stabilization, or the Area Rent Director of the Defense-Rental Area of Southern Alameda County, or any other person or persons appointed or designated by the Director of Rent Stabilization to carry out any of the duties delegated to him pursuant to the Housing and Rent Act of 1947, as amended, make or issue an order fixing, increasing or otherwise adjusting the maximum rent allowable for the said premises which were the subject of said lease between the defendants and the plaintiff."

5. The trial court erred in failing to find as follows:

"Under the terms and provisions of the said lease between the defendants and the plaintiff, the plaintiff, as tenant, had no power to cancel or otherwise terminate the said lease prior to October 1, 1952."

6. The trial court erred in failing to find as follows:

"All of the individual housing accommodations

in the said premises so leased by the defendants to the plaintiff, consisting of individual rooms and units in a motor court or motel, were controlled housing accommodations and were subject to the provisions of Rent Regulation 2."

7. The trial court erred in failing to find as follows:

"The gross receipts from the plaintiff's operation of the said leased premises as a motor court or motel were as follows: During the month of March, 1952, the sum of Nine Hundred Forty-Four and no/100 ($944.00) Dollars; during the month of April, 1952, the sum of One Thousand Two Hundred Sixty-Two and 50/100 ($1262.50) Dollars; during the month of May, 1952, the sum of Two Thousand Four Hundred Sixty-Two and no/100 ($2462.00) Dollars; during the months of June through August, 1952, gross receipts in each month were not less than Two Thousand Five Hundred and no/100 ($2500.00) Dollars. Within one year immediately prior to the commencement of this action the defendants demanded, accepted and received from the plaintiff as rent for the said housing accommodations leased from the defendants to the plaintiff the following sums: The sum of Two Thousand and no/100 ($2000.00) Dollars as and for rent for the month of March, 1952; the sum of Two Thousand and no/100 ($2000.00) Dollars as and for rent for the month of April, 1952; the sum of Two Thousand and no/100 ($2000.00) Dollars as and for rent for the month of May, 1952; the sum of Two Thousand Four Hundred Thirty-

Three and no/100 ($2433.00) Dollars as and for rent for the month of June, 1952; the sum of Two Thousand and no/100 ($2000.00) Dollars as and for rent for the month of July, 1952; and the sum of Two Thousand One Hundred Forty-Five and no/100 ($2145.00) Dollars as and for rent for the month of August, 1952."

8. The trial court erred in failing to find that the appellant has been required to employ and has employed counsel to institute, maintain and prosecute this action against the appellees and, further, in failing to find what amount would constitute reasonable attorneys' fees for the services performed by such counsel.

9. The trial court erred in finding as follows:

"Defendants believed that their Master Lease with plaintiff was not subject to rent control. Defendants did not learn that they were required to register the premises with the Office of Rent Control until May, 1952. At that time, they requested of the Area Rent Director that he decontrol the premises or fix a fair rental. This he sought to do under Rent Regulation 1, Section 166. The Rent Director failed to win approval of a decontrol recommendation and he did not establish a maximum rent. The Advisory Board in Alameda County informed the Rent Director that there were no comparable housing accommodations in the Area to serve as a yardstick for fixing maximum rent. Controls expired during this period and there-

fore no maximum rent was ever fixed for said premises."

10. The trial court erred in concluding that the maximum not having been declared or fixed in the first instance either by administrative process or judicial decree, any action fixing a maximum rental of an amount less than that called for in the lease would result in retroactive procedure wherein appellant would receive an unwarranted refund.

11. The trial court erred in concluding that the appellees were entitled to judgment against the appellant.

12. The trial court erred in failing to conclude that it had jurisdiction of the subject matter of this action and of the parties hereto.

13. The trial court erred in failing to conclude that the housing accommodations leased by the appellees to the appellant were controlled housing accommodations within the meaning of Rent Regulation 1 (Housing Rent Regulation) issued pursuant to the Housing and Rent Act of 1947, as amended.

14. The trial court erred in failing to conclude that, at all times between January 14, 1952, and September 30, 1952, the maximum lawful monthly rent for the said premises leased by the appellees to the appellant was the sum computed each month by taking the gross receipts from the appellant's operation of a motor court or motel on the leased

premises and deducting therefrom the sum of Five Hundred and no100 ($500.00) Dollars.

15. The trial court erred in failing to conclude that the amounts demanded, accepted and received by the appellees from the appellant as and for rent for said premises exceeded the maximum lawful rent for said premises in the amount of One Thousand Five Hundred Fifty-Six and no/100 ($1556.00) Dollars for the month of March, 1952, in the amount of One Thousand Two Hundred Thirty-Seven and 50/100 ($1237.50) Dollars for the month of April, 1952, and the amount of Thirty-Eight and no/100 ($38.00) Dollars for the month of May, 1952.

16. The trial court erred in failing to conclude that the appellant was entitled to recover from the appellees three times the amount of single overcharges of rent and, in addition thereto, a reasonable sum as attorneys' fees.

17. The evidence does not support or sustain the findings of fact and conclusions of law, as aforesaid.

18. The findings of fact do not support or sustain the conclusions of law.

19. The findings of fact and conclusions of law do not support or sustain the judgment herein.

20. The trial court erred in ordering, adjudging and decreeing that appellant take nothing by

this action and that the appellees be awarded their costs herein.

Designation of Parts of Record Deemed Necessary for Consideration of Appeal

Appellant designates the complete record, proceedings, evidence and exhibits in the action (original exhibits to be used in consideration of this appeal without reproduction in the record).

The foregoing statement of points on appeal and designation of parts of the record which appellant deems necessary for the consideration of said appeal is presented and filed in compliance with the provisions of Rule 17, subdivision 6, of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit.

Dated: December 27, 1954.

MALONE & SULLIVAN,

/s/ RAYMOND L. SULLIVAN,

/s/ WILLIAM J. MALONE, JR.,
Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 27, 1954.

[Title of Court of Appeals and Cause.]

STIPULATION TO DISPENSE WITH PRINTING OF ORIGINAL EXHIBITS

It is hereby stipulated, by and between the parties hereto that the original exhibits to be used on the consideration of this appeal need not be printed as part of the record herein and that all exhibits admitted in evidence in said action may be considered by the above-entitled court in their original form.

Dated: December 27, 1954.

MALONE & SULLIVAN,

/s/ RAYMOND L. SULLIVAN,

/s/ WILLIAM J. MALONE, JR.,
Attorneys for Appellant.

/s/ MARVIN G. GIOMETTI,

/s/ JAMES P. THORNTON, JR.,
Attorneys for Appellees.

[Endorsed]: Filed December 27, 1954.